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THE

LICENSING ACTS,

1828, 1869 & 1872-1874;

CONTAINING

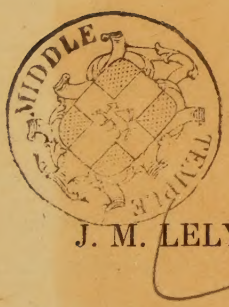
THE LAW OF THE SALE OF LIQUORS BY RETAIL AND THE MANAGEMENT OF LICENSED HOUSES;

With Notes to the Acts,

A SUMMARY OF THE LAW,

AND AN

APPENDIX OF FORMS.



Second Edition.

BY

J. M. LELY AND W. D. I. FOULKES,
BARRISTERS-AT-LAW.

LONDON:
HENRY SWEET, 3, CHANCERY LANE;
STEVENS & SONS, 119, CHANCERY LANE;
Law Publishers.
1874.

LONDON:
PRINTED BY C. ROWORTH AND SONS,
NEWTON STREET, HIGH HOLBORN.

PREFACE TO THE SECOND EDITION.

THE Licensing Act passed last Session falls easily into the plan of arrangement adopted by the writers in 1872. In the present edition the sections of the new Act have been interpolated in their appropriate places among the sections of the Act of 1872, so that the two Statutes, which are one in law, may be read together in the text. The Summary and the whole book have been carefully revised by the light of the new Act and recent cases; frequent references have been given from page to page; the set of Forms has been largely increased, and the Rules of the Middlesex Sessions for the Licensing Committee have been printed by way of sample. As to the general effect of the new Statute upon the law of licensing, it rather increases than diminishes the difficulty of the subject, as it makes no attempt at consolidation, but merely adds one more to the Licensing Acts.

J. M. L.
W. D. I. F.

TEMPLE,
August 17th, 1874.

PREFACE.

THE law of licensing being entirely contained in a written form, it seemed to the present writers to be of the first importance, in treating the subject, to furnish the reader with the words of the statutes themselves. These statutes are numerous and scattered; and it was thought advisable to introduce some arrangement more manageable than a mere chronological order. The plan adopted, on consideration, has been to divide the Licensing Acts into three groups; the first, consisting of the original Licensing Act of 1828, and the act which amends it; and the second, of the Wine and Beerhouse Act, 1869, and the acts which it recites, the subsidiary enactments being in each case interpolated in their appropriate places, and distinguished by square brackets from the principal statute. The Licensing Act of 1872, which is supplementary to both, is, in the third place, printed entire, with notes between the sections. For facility of reference, the marginal notes supplied by the Queen's Printers, being without authority, and not, in general, of a satisfactory character, have been re-written throughout. The statute law, however, even

when thus arranged, being still in a thoroughly undigested shape, its general effect has been given in a summary of the whole; while in view of the numerous forms required, but not provided, by the Act of 1872, a set of forms has been supplied in an Appendix. The writers cannot expect that no errors will be detected in the book, but they feel justified in hoping that these will partly be excused by the cumbrousness and complexity of the subject.

J. M. L.
W. D. I. F.

TEMPLE,
27th August, 1872.

TABLE OF CONTENTS.

I.

History and Summary of the Law.

	PAGE
History	1
Licences	7
Disqualifications	11
Licensing Authority	14
Application for New Licence	17
Hearing of Application	18
Renewals	19
Transfers	21
Management and Closing Hours	23
Forfeiture of Licence	25
Table of Offences	27

II.

Licensing Act, 1828, and its Amending Act.

Sections 1—5 of Act of 1828
General Annual Meetings; Special Sessions .. 30

Sections 7—9 of Act of 1828
Borough and County Justices; Majority to prevail .. 37

Sections 12—14 of Act of 1828
Attendance of Applicant; Duration of Licence; Transfers .. 39

[Sections 1—4 of Amending Act (5 & 6 Vict. c. 44)
Temporary Transfers] .. 42

Sections 15—17 of Act of 1828
Fees; Disqualifications; Excise .. 45

Section 24 of Act of 1828
Penalty on Justice .. 47

Sections 27—30 of Act of 1828
Appeal; Action against Justice .. 48

Sections 36, 37 of Act of 1828
Savings; Interpretation .. 53

III.

THE WINE AND BEERHOUSE ACT, 1869, WITH ITS RECITED ACTS AND AMENDING ACT.

Sections 1—4 of Act of 1869 PAGE
Magistrates' Licences for Beer, Cider and Wine 55
[Sections 2, 10, 30 of 1 Will. 4, c. 64
Excise Licence for Beer or Cider not to be drunk on the Premises] 57
[Sections 1, 15, 16 of 4 & 5 Will. 4, c. 85
Excise Licence for Beer or Cider to be drunk on the Premises] .. 61
[Sections 1, 7, 8, 18 of 3 & 4 Vict. c. 61
Qualifications for Beer Licences] 62
[Section 3 of 24 & 25 Vict. c. 21
Table-Beer Licence] 65
[Section 1 of 26 & 27 Vict. c. 33
Beer-dealer's Retail Licence] 65
[Section 10 of 33 & 34 Vict. c. 29
Qualification for Beer-dealers' Retail Licence] 65
[Sections 1, 3, 4, 6, 7, 8, 11, 12, 22 of 23 Vict. c. 27
Refreshment-house Licence; Refreshment-house Wine Licence; Shopkeeper's Wine Licence] 66
Sections 5—8 of Act of 1869
Application of Act of 1828 to Beer, Cider and Wine Licences .. 70
[Sections 3, 4, 11 of 33 & 34 Vict. c. 29
Further Application of Act of 1828] 73
Section 11 of Act of 1869
Forgery of Certificate 75
Section 19 of Act of 1869
Reservation for existing Licences 76
[Section 7 of 33 & 34 Vict. c. 29
Amendment] 76
Sections 20, 21 of Act of 1869
Savings and Repeals 77

IV.

LICENSING ACTS, 1872—1874.

Sections 1, 2 of Act of 1872
Preliminary 79
[Sections 1, 2 of Act of 1874
Construction and Commencement] 79
Sections 1—10 of Act of 1872
Illicit Sales 80
[Section 11 of Act of 1874
Amendment; Descriptive Boards] 88
Sections 12—18 of Act of 1872
Offences against Public Order 88

PAGE

[Section 14 of Act of 1874
Adulteration] 95
Section 23 of Act of 1872
Closing in case of Riot 97
[Sections 3, 6, 9, 10 of Act of 1874
Hours of Closing and Penalties; Bonâ fide Traveller] 97
Section 25 of Act of 1872
Person found on Premises during Closing Hours 105
[Section 30 of Act of 1874
Entertainment of Friends] 106
Section 26 of Act of 1872
Exemption from Closing 106
[Sections 4, 5 of Act of 1874
Amendment as to Exemptions] 108
Section 27 of Act of 1872
Consumption of Liquor in Refreshment-house 108
[Section 11 of Act of 1874
Closing of Refreshment-houses] 109
Sections 28, 29 of Act of 1872
Closing of Refreshment-houses Licensed for Wine; Occasional
Exemptions from Closing 110
[Sections 18—20 of Act of 1874
Occasional Licences] 111
[Section 13 of Act of 1874
Record of Convictions on Licence] 113
Sections 30—34 of Act of 1872
Repeated Convictions.. 114
[Sections 16, 17, of Act of 1874
Entry on Premises by Constable] 117
Section 36 of Act of 1872
Register of Licences 119
Section 37, 38 of Act of 1872
Confirmation of new Licences 120
[Sections 21—25 of Act of 1874
Joint Committee; Provisional Licence; Separate Licences; Con-
firmation dispensed with if Liquor drunk off Premises] .. 124
[Section 31 of Act of 1874
Beer-dealer's Retail Licence] 126
Sections 39—42 of Act of 1872
Stipendiary Magistrates; Notices of Application; Withholding
Licence; Renewals.. 127
[Section 26 of Act of 1874
Amendment as to Renewals] 130
Sections 43—49 of Act of 1872
Procedure on Confirmation; Qualification of Premises; Forms of
Licence; Six-day Licence 130
[Sections 7, 8 of Act of 1874
Early Closing Licence; Remission of Duty] 135
Sections 50—56 of Act of 1872
Removals; Legal Proceedings; Appeals against Conviction;
Notice to Owner 136

PAGE

[Sections 15, 29 of Act of 1874
Temporary Transfer to Owner ; Registration of Owner] .. 144

Sections 57—66 of Act of 1872
Convictions; Disqualification of Justices; Piers, &c.; Production of Licence; Census 145

[Section 12 of Act of 1874
Minimum Penalty on second Offences] 148

Sections 68—75 of Act of 1872
Retail Spirit, Liqueur and Wine Licences; Savings; Definitions; Repeal 148

[Sections 27, 32, 33 of Act of 1874
Repeals; Definitions; Order as to "Populous Place," &c.; Meetings of County Licensing Committee] 158

Sections 76—90 of Act of 1872
Application of Act to Ireland 160

Schedule of Act of 1872
Repealed Enactments.. 170

APPENDIX OF FORMS.

OFFICIAL FORMS OF LICENCES.

I. Grant and Confirmation of new Licence 175
II. Renewal of Licence 176
III. Renewal by Endorsement 177
IV. Transfer 178
V. Grant of Licence at Special Sessions 179
Appendix to Official Forms 179

FORMS SUPPLIED BY EDITORS.

1. Order of County Licensing Committee under Sect. 32 of Act of 1874 182
2. Precept appointing General Annual Licensing Meeting 183
3. Order to Police Constable to affix Notices 183
4. Notice of Application for New Licence 184
5. Notice of Application for a Transfer to a New Person 184
6. Notice of Application for a Transfer to New Premises 185
7. Notice of Application for a Removal 186
8. Order sanctioning Removal 187
9. Notice to attend upon Application for Renewal 187
10. Notice of Opposition to Renewal 188
11. Temporary Authority to sell Liquors under 5 & 6 Vict. c. 44 .. 188
12. Notice of Appeal against Conviction 188
13. Notice of Appeal against a Refusal to Renew or Transfer .. 189
14. Recognizance to prosecute Appeal 189
15. Condition when Appeal is against Conviction 190

FORM PAGE
16. Condition when Appeal is against Refusal to Renew or Transfer 190
17. Order as to Sunday Afternoon Closing 191
18. Order of Exemption from Closing 191
19. Notice of Order of Exemption 192
20. Occasional Licence, exempting from Closing 192
21. Notice to Owner of Conviction 193
22. Order of Disqualification of Premises 193
23. Notice to Owner of Order of Disqualification of Premises .. 194
24. Notice to Owner of Disqualification of Premises 194
25. The same upon two Forfeitures 195
26. Register of Licences 196

RULES AND REGULATIONS of Middlesex Quarter Sessions under Act of 1872 197

INDEX 199

TABLE OF CASES.

A.

	PAGE
Atkinson *v.* Sellers ..	103, 104
Att.-Gen. *v.* Lockwood ..	96

B.

Bassett *v.* Godschall	34
Belasco *v.* Hannant	91
Bowman *v.* Blyth	84
Brandon *v.* Old	90
Brooker *v.* Wood	60
Brown *v.* Nicholson ..	38, 84
Bryant *v.* Beattie	42

C.

Calye's case	32
Candlish *v.* Simpson	38
Cates *v.* South	102
Claydon *v.* Green	42
Cole *v.* Coulton	91
Cooper *v.* Wandsworth Board of Works	33
Copley *v.* Burton	103
Cross *v.* Watts	85

D.

Danfield *v.* Taylor	93
Dansey *v.* Richardson	31
Davies *v.* Scrace	103
Day *v.* Luhke	42
Deal *v.* Schofield	85

F.

Fell *v.* Knight	94
Fisher *v.* Howard	104
Fitzpatrick *v.* Kelly	96

G.

	PAGE
Garetty *v.* Potts ..	63, 140
Gelan *v.* Hall	34
Gill *v.* Bright	119
Greig *v.* Bendeno	91

H.

Hargreaves *v.* Dawson ..	76
Hayward *v.* Holland	112
Holder *v.* Soulby	31

J.

Jones *v.* Axem	139
—— *v.* Whitaker ..	47, 157

K.

Kirkman *v.* Shawcross ..	31

L.

Linford *v.* Fitzroy	34
Looker *v.* Halcombe	92

M.

Mann's case	132, 141
Marriage *v.* E. C. Rail. Co. ..	82
Marshall *v.* Fox	91
Martin *v.* Pridgeon	89
Marwick *v.* Codlin	121
Meux *v.* Humphries	60
Modlen *v.* Snowball	42
Morgan *v.* Hedger	103
—— *v.* Palmer ..	31, 46

PAGE

Moufiet *v.* Cole 99
Mullins *v.* Collins .. 90, 93

O.

Overton *v.* Hunter 106

P.

Parker *v.* Flint .. 31, 83
——— *v.* Green 139
Patten *v.* Rhymer 93
Peache *v.* Colman 103
Peplow *v.* Richardson 104
Petherick *v.* Sargent 102
Pope *v.* Tearle 96
Purkis v. Huxtable 91

R.

R. *v.* Archdall 151
— *v.* Ashton 43
— *v.* Athay 33
— *v.* Bass 141
— *v.* Belton 50
— ex rel. Boland *v.* Excise .. 166
— *v.* Boteler 33
— *v.* Bryan 84
— *v.* Cheshire, JJ. 50
— *v.* Cornelius 34
— *v.* Curzon 76
— *v.* Dale 52
— *v.* Davey 31
— *v.* Deane 49
— *v.* Devonshire, JJ. .. 157
— *v.* Dobson 84
— *v.* Downs 84
— *v.* Ely 50
— *v.* Exeter, JJ. (Mann's case) 132, 141
— *v.* Farringdon, JJ. .. 33
— *v.* Giles 32
— *v.* Hann 34
— *v.* Haslingfield Overseers .. 46
— *v.* Hellier 51
— *v.* Holland 34
— *v.* Jarvis 139
— *v.* Kensington 63
— *v.* Lancashire, JJ. (1) .. 83
— *v.* Lancashire, JJ. (2) .. 33
— *v.* Leicestershire, JJ. .. 39

PAGE

R. *v.* Luellin 31
— *v.* Mann 132, 141
— *v.* Middlesex, JJ. (1) 49, 137
— *v.* Middlesex, JJ. (2). .. 42
— *v.* Minshull 39
— *v.* Neville 84
— *v.* Nottingham 34
— *v.* Pawlett 49
— *v.* Pilgrim 131
— *v.* Pratt 50
— *v.* Pratten 139
— *v.* Recorder of Bristol .. 50
— *v.* Rice 92
— *v.* Rochester (Mayor of) .. 36
— *v.* Rowell 42
— *v.* Sainsbury 38
— *v.* Salford, JJ. 141
— *v.* Smith (Albert) 122
— *v.* Smith 72, 158
— *v.* Southport, JJ. .. 72, 158
— *v.* Surrey, JJ. 32
— *v.* Sylvester 33
— *v.* Taylor 42
— *v.* Temple 34
— *v.* Tott 118
— *v.* Walsall, JJ. 33
— *v.* West Riding, JJ. .. 36
— *v.* Wilkinson 82
— *v.* Williams 34
— *v.* Young 34
Ritchie *v.* Smith 42
Roberts *v.* Egerton 96
——— *v.* Humphries 103, 139
Rushworth, Ex parte 36

S.

Scott *v.* Gilmore 90
Simpkin *v.* Birmingham, JJ. 42
Six Carpenters' case 32
Soden *v.* Cray 89

T.

Taylor *v.* Humphries .. 103, 104
——— *v.* Oram 109
Tennant *v.* Cumberland .. 103

W.

West *v.* Potts 140

TABLE OF STATUTES.

	PAGE
11 Hen. 7, c. 2, s. 5	31
33 Hen. 8, c. 9, s. 11	93
5 & 6 Edw. 6, c. 25 ..	31, 52
1 Jac. 1, c. 9	52
4 Jac, 1, c. 4	52
c. 5	52
21 Jac. 1, c. 7, s. 4	89
s. 5	52
c. 28	31
1 Car. 1, c. 4	52
3 Car. 1, c. 3	52
10 & 11 Will. 3, c. 17.. ..	93
9 Geo. 2, c. 23, ss. 14, 15, 20..	52
12 Geo. 2, c. 28, s. 2	93
13 Geo. 2, c. 19	93
16 Geo. 2, c. 8, s. 12	152
16 Geo. 2, c. 10	32
18 Geo. 2, c. 24	93
24 Geo. 2, c. 40, s. 12.. ..	90
25 Geo. 2, c. 36, s. 5	91
s. 24.. ..	52
26 Geo. 2, c. 31	52
28 Geo. 2, c. 19, s. 2	52
29 Geo. 2, c. 12, ss. 23, 24 ..	52
30 Geo. 2, c. 24, s. 14.. ..	52
5 Geo. 3, c. 46, ss. 20, 21, 22..	52
30 Geo. 3, c. 38, s. 15..	7, 81
32 Geo. 3, c. 59	52
35 Geo. 3, c. 113 ..	53, 83
38 Geo. 3, c. 54, s. 13.. ..	52
39 Geo. 3, c. 79, s. 14..	25, 53
c. 86	52
48 Geo. 3, c. 143	52
56 Geo. 3, c. 58, s. 2 ..	53, 96
57 Geo. 3, c. 19, s. 29.. ..	25
4 Geo. 4, c. 125, ss. 1—6 ..	52
5 Geo. 4, c. 102	79
6 Geo. 4, c. 81, s. 2	32
s. 13 ..	32, 83, 47
s. 14 ..	32, 47
s. 21	22
s. 25	88
s. 26	83
7 & 8 Geo. 4, c. 53, ss. 17, 63..	83

	PAGE
9 Geo. 4, c. 47, s. 1 ..	.. 151
c. 58	.. 79
c. 61	30—54
11 Geo. 4 & 1 Will. 4,	
c. 64, s. 2	.. 57
s. 6	.. 88
s. 7	.. 83
s. 10	.. 60
s. 30	.. 60
3 & 4 Will. 4, c. 68 ..	.. 79
4 & 5 Will. 4, c. 77, s. 9 ..	81
c. 85, s. 1 ..	61
ss. 15, 16	61
5 & 6 Will. 4, c. 39, s. 7 ..	151
6 & 7 Will. 4, c. 38	79
2 & 3 Vict. c. 47, s. 43 ..	86
s. 45 ..	87
3 & 4 Vict. c. 61, s. 1.. ..	62
s. 7.. ..	63
ss. 8, 28 ..	64
5 & 6 Vict. c. 44, ss. 1—4	42—45
s. 5 ..	147
8 & 9 Vict. c. 109, s. 1 ..	93
s. 11 ..	94
sched. ..	157
10 Vict. c. 5	96
10 & 11 Vict. c. 89, s. 29 ..	89
s. 35 ..	91
11 & 12 Vict. c. 43	139
c. 44	34
c. 49	2
12 & 13 Vict. c. 45, s. 5 ..	50
13 Vict. c. 21, s. 5	83
14 & 15 Vict. c. 99, s. 3 ..	139
16 & 17 Vict. c. 67	79
c. 119	93
17 & 18 Vict. c. 79, s. 1 ..	104
18 & 19 Vict. c. 38, s. 1 ..	152
c. 118	104
20 & 21 Vict. c. 43	140
21 & 22 Vict. c. 73, s. 1 ..	127
c. 98, s. 16 ..	100
23 Vict. c. 27, s. 1	66
s. 3	67

	PAGE
23 Vict. c. 27, s. 4 ..	67, 81
s. 6	67
s. 7	68
s. 8	68
s. 11	69
s. 12	69
s. 22	69
23 & 24 Vict. c. 84	95
c. 107	79
c. 114, s. 169 ..	149
24 & 25 Vict. c. 21, s. 2 ..	148
s. 3 ..	65
c. 75, s. 4 ..	32
c. 91, s. 1 ..	152
s. 9 ..	66
s. 10 ..	67
25 Vict. c. 22, s. 13	112
s. 16	151
s. 20	96
25 & 26 Vict. c. 38	90
26 & 27 Vict. c. 33, s. 1 ..	65
s. 20 ..	113
27 Vict. c. 10, s. 11	146
c. 18, s. 5	113
27 & 28 Vict. c. 18, s. 5 ..	113
c. 64 ..	104, 109
c. 127	139
30 & 31 Vict. c. 142	90
32 & 33 Vict. c. 27 ..	55—78
c. 47	35
33 & 34 Vict. c. 29, ss. 3, 4 ..	73
s. 7 ..	76
s. 10 ..	65
s. 11 ..	74
c. 112, s. 10 ..	91
34 & 35 Vict. c. 88	4
c. 112, s. 10 ..	91
35 & 36 Vict. c. 74	95
35 & 36 Vict. c. 79	100
c. 94 ..	79—173
37 Vict. c. 4, s. 93	151
c. 5, s. 91	151
37 & 38 Vict. c. 49, s. 1 ..	79
s. 2 ..	80
s. 3 ..	97
s. 4 ..	108
s. 5 ..	108
s. 6 ..	101
s. 7 ..	135
s. 8 ..	136
s. 9 ..	101
s. 10 ..	102
s. 11 ..	109
s. 12 ..	148
s. 13 ..	113
s. 14 ..	35
s. 15 ..	144
s. 16 ..	117
s. 17 ..	118
s. 18 ..	111
s. 19 ..	112
s. 20 ..	113
s. 21 ..	124
s. 22 ..	124
s. 23 ..	126
s. 24 ..	126
s. 25 ..	126
s. 26 ..	130
s. 27 ..	158
s. 28 ..	88
s. 29 ..	144
s. 30 ..	106
s. 31 ..	126
s. 32 ..	158
s. 33 ..	160
c. 69 ..	79, 160

THE LICENSING ACTS,

1828, 1869 & 1872-4.

I.

HISTORY AND SUMMARY OF THE LAW.

At common law there was no restriction upon the sale of intoxicating liquors, and the licensing system is purely of statutory creation. It has two distinct objects in view,—the preservation of order, and the collection of revenue. The earlier enactments, dating from the reign of Henry the Seventh, which conferred the power of licensing upon the justices of the peace, were directed solely to the preservation of order; and although an excise duty was imposed upon the liquors themselves in the reign of Charles the First, it was not until the reign of Anne that a tax was levied on the mode of selling them by means of a licence duty. In the reign of George the Second, the licence, formerly for an indefinite period, was, for convenience in collecting the licence duty, first made annual. Eventually all the police law of licensing was reduced into one act by the act passed in the year 1828, which provided the present licensing machinery under the absolute control of the magistrates, and governed the sale by retail of all intoxicating liquors. 9 Geo. 4, c. 61.

So strict a law, however, was considered not to offer sufficient facilities for "supplying the public with beer," and in 1830 the Beer Act was passed, by which power was given to any householder to take out an excise 1 Will. 4, c. 64.

licence for the sale of beer and cider on payment of an annual duty only. The justices' licence for the sale of these articles thus became no longer necessary; but the police clauses of the Act of 1828 were applied to this kind of sale, with additional provisions, such as, in particular, specified hours of closing, not hitherto required;—ten o'clock in the evening being the closing hour fixed for all beer-houses wherever situate. Not long after it was discovered that "much evil had arisen from the management" of houses so easily licensed,

4 & 5 Will. 4, c. 85.

and in 1834 was passed a restrictive act, distinguishing between licences for the sale of beer to be drunk on the premises, and not to be drunk on the premises. The freedom of sale in the latter case was left untouched; but every applicant for the excise licence to sell beer or cider to be drunk on the premises was required to obtain a certificate of good character, signed by six ratepayers not engaged in the trade. A full discretionary power over the closing hours for houses so licensed was vested in the district justices, subject to an appeal from them to quarter sessions, and the restriction that no house should be allowed to remain open later than eleven. By the same act, also, police constables were empowered to enter all houses licensed to sell liquors to be drunk on the premises, "as they should think proper."

3 & 4 Vict. c. 61.

In 1840, a minimum rateable value, varying with the population of the district, was made a condition to licensing a beer-house, and statutory hours of closing, varying from ten to twelve according to the population, were also prescribed.

11 & 12 Vict. c. 49.
17 & 18 Vict. c. 79.
18 & 19 Vict. c. 118.

In 1848, 1854 and 1855, acts were passed regulating the Sunday closing hours of all licensed houses, the Act of 1855 repealing that of 1854 as having been found "to be attended with inconvenience to the public." The result was that no house was allowed to be open before half-past twelve, or the termination of morning divine service, or between three and five in the afternoon, or after eleven at night.

In 1860, the sale of wine by retail not to be drunk on the premises was thrown open to wine dealers, and to shopkeepers selling any other article besides wine, and the sale of it, to be drunk on the premises, to such persons as confectioners and eating-house keepers. Persons holding either kind of licence were subjected to closing regulations similar to those of the Beer Acts. In the same way in 1861, the sale of spirits by retail, not to be drunk on the premises, hitherto entirely in the hands of the publican, was thrown open to persons holding the spirit-dealer's wholesale excise licence. 23 Vict. c. 27. 24 & 25 Vict. c. 21, s. 2.

All this time there were no closing regulations affecting houses licensed under this Act of 1828, except for Sunday, on which day certain hours of closing were prescribed for all licensed houses. In 1864, these houses were ordered to be closed from one to four in the morning, within the Metropolitan Police District, and such other districts as might choose to adopt the closing act. In 1865, the local authorities were empowered to grant orders of exemption from closing for the accommodation of persons attending markets, &c., from two to four in the morning, to the traders affected by the Act of 1864. 27 & 28 Vict. c. 64. 28 & 29 Vict. c. 77.

The year 1869 produced a most important change. In that year, the sale of beer, cider and wine which, as we have seen, had in 1830 and in 1860 respectively been emancipated from the control of the justices under the Act of 1828, was again brought under their control by the Wine and Beerhouse Act of Sir H. Selwin-Ibbetson. The discretion of the justices, however, to refuse beer, cider, or wine licences, was made subject to the qualification that no licence for the sale of these liquors, not to be drunk on the premises, and no renewal of a licence of any kind then existing, should be refused, except on grounds affecting the character of the applicant or his house. The Act of 1869 contained various new police regulations, the most novel of which was one, applicable to all licensed houses, 32 & 33 Vict. c. 27.

to the effect that any person found upon the premises during closing hours should be liable to a penalty. In an amending act of the following year, occasion was taken to prescribe the minimum penalty of one pound for offences committed by persons licensed under the Acts of 1830, 1834 or 1860.

33 & 34 Vict. c. 29.

34 & 35 Vict. c. 88.

Passing over the Suspension Act of 1871, which suspended altogether the grant of new licences except with the consent of the secretary of state, we come to the Licensing Act of 1872. By this act the police clauses of the old law were consolidated with important amendments and additions. The closing hours in particular were materially altered, being fixed at midnight for the metropolis, and at eleven for all other places, the justices having (except in the metropolis) a discretionary power, which might be exercised annually, of altering the statutory closing hours within certain limits. Notwithstanding the passing of a general adulteration act in the same year, the Licensing Act of 1872 contained special adulteration clauses, which were as severe as they were elaborate. The minimum penalty of one pound was prescribed for all offences committed by licensed persons, and the maximum penalties were in most cases largely increased. But the leading feature of the act was the scheme which it provided for the abolition of badly-conducted houses. It was enacted, that upon every third conviction for certain offences (mostly those which were offences against the tenor of the licence under the old law) the licence was to be forfeited ipso facto. For this provision to operate, the two former convictions had to be recorded on the licence, the recording being in some cases imperative, while in others the conviction was to be endorsed on the licence "unless the convicting justices should otherwise direct." Moreover, new licences were made far more difficult to obtain, the power of appeal against a refusal to grant a new licence being in general taken away; and the grant of a new licence being required to be con-

35 & 36 Vict. c. 94.

firmed by a supervising body of justices. On the other hand, renewals were made more easy to obtain, the personal attendance of applicants being dispensed with unless expressly required, and written notice of an intention to oppose being made requisite. Valuation clauses of a somewhat involved character were inserted, and premises on which liquors were sold and consumed were required to be structurally adapted to the character of the business. Finally, shopkeepers selling spirits by retail under a spirit dealer's wholesale excise licence, were required to obtain a magistrates' licence, but the magistrates were prohibited from refusing such a licence except upon grounds affecting the character of the applicant or his house.

We now come to the Licensing Act, 1874, which received the royal assent on the 30th July of that year, but does not operate so as to alter the hours of closing until the 10th October. This act, which is to be construed as one with the Licensing Act, 1872, is almost entirely composed of amendments of that statute, which it refers to throughout as "the principal act." The amendments are mostly directed to the mitigation of the severity of the enactments of 1872. The discretionary power of the local justices over the hours of closing is abolished, and three statutory scales of closing hours are provided. In the metropolitan district the hour of closing at night is extended to half-past twelve. In the country, houses are to close at eleven or ten at night, according as the Legislature considers them to be in an urban or rural district. The whole of the metropolitan police district, all "towns" containing one thousand inhabitants and possessing an urban sanitary authority (including in such towns any collection of adjacent houses which the county licensing committee may declare to be part of the town for the purpose of the act), and all places containing one thousand inhabitants which the county licensing committee may pronounce to be "populous," come within the first of these two classes. All houses

37 & 38 Vict. c. 49.

situated elsewhere are subject to the third scale and close at ten o'clock at night. The minimum penalty for licensing offences is to be enforced in the case of a second conviction only. The adulteration clauses of the Act 1872 are swept away, and adulteration by licensed persons is left to the operation of the general acts, aided only by the special penalty of indorsement on the licence. The recording of convictions generally is placed in the absolute discretion of the convicting magistrates, and the direction that a conviction be recorded is made a subject of appeal to quarter sessions. The power of entry by constables into licensed houses, first given in 1834 and re-enacted and brought into prominence by the Act of 1872, re-appears in the present act, accompanied by new words of qualification. Holders of licences have express power to entertain their private friends in closing hours, and an honest belief that an applicant for liquor in those hours is a bonâ fide traveller is to justify his being served; but he on the other hand is not considered to satisfy the character of a traveller unless he is distant three miles from the place of his last night's lodging. Refreshment houses not licensed for the sale of liquor (before 1864 allowed to be open all night, and before the present act allowed to be open till one in the morning), are to be closed at the same hours as if a liquor licence were attached to them. Provisional licences may be granted in respect of premises about to be constructed or in the course of construction for the sale of liquor to be drunk on the premises, and a licence to sell liquor for consumption only off the premises is not to require confirmation.

The Acts of 1872 and 1874 thus containing all the police law relating to the sale of liquors by retail, the Act of 1828 will be found to contain the machinery for holding licensing meetings and the law relating to the general public-house licence; while the Act of 1869, with its subsidiary acts, contains the law relating to special licences for the sale of particular liquors. The

whole law relating to the sale of liquors by retail may be summarised under its leading heads as follows :—

Licences.

Licences for the sale of intoxicating liquors are of two kinds, and are granted by two authorities,—the local magistrates and the commissioners of inland revenue. No intoxicating liquor may be sold (except wine by free vintners) without the excise licence; and with certain specified exceptions, no excise licence to sell intoxicating liquors by retail may be obtained except upon production of the corresponding magistrates' licence. Each licence is in force for one year only. Sale by retail is defined in the case of spirits as a sale of less than two gallons (*a*); in the case of wine, a sale of less than two gallons, or one dozen quart bottles (*b*); and in the case of beer or cider, less than four gallons and a half (*c*). The excepted cases of sale by retail, in which the magistrates' licence is not required, are—

The spirit-dealer's retail spirit licence (*d*);

The spirit-dealer's retail liqueur licence (*e*);

The wine-dealer's retail wine licence (*f*);

The methylated spirits licence (*g*);

The spruce or black beer brewer's licence (*h*);

all authorizing sale for consumption off the premises only; and,

The theatre licence (*i*);

The packet-boat licence (*k*);

both authorizing sale for consumption on the premises.

(*a*) 30 Geo. 3, c. 38, s. 15; 34 & 35 Vict. c. 116.
(*b*) 23 Vict. c. 27, s. 4, p. 67.
(*c*) 4 & 5 Will. 4, c. 85, s. 19.
(*d*) 24 & 25 Vict. c. 21, s. 2; Act of 1872, s. 73.
(*e*) 11 & 12 Vict. c. 121, s. 9; 23 & 24 Vict. c. 114, s. 169; Act of 1872, s. 73.
(*f*) 23 Vict. c. 27, s. 3; Act of 1872, s. 73.
(*g*) 18 & 19 Vict. c. 38, s. 1; 24 & 25 Vict. c. 91, s. 1.
(*h*) 25 Vict. c. 22, s. 9.
(*i*) 5 & 6 Will. 4, c. 39, s. 7.
(*k*) 9 Geo. 4, c. 47, s. 1.

The spirit-dealer's retail excise licences may only be taken out for premises used for the sale of liquors and no other articles. The spirit-dealer under his retail licence may not sell a less quantity than a quart. Liqueurs may also be sold in the bottles in which they were imported. The holder of the wine-dealer's retail licence may sell wine in reputed quart or pint bottles only. Methylated spirits must be composed of such ingredients as not to be fit to be used as a beverage. Spruce or black beer must not be mixed with hops or other ingredients producing fermentation.

The licences granted by the magistrates as a preliminary to the corresponding excise licences are as follow (*l*):—

1. The public-house licence (*m*).
2. The licence for beer to be drunk on the premises (*n*).
3. The licence for cider to be drunk on the premises (*o*).
4. The refreshment-house wine licence (*p*).
5. The licence for beer not to be drunk on the premises (*q*).
6. The licence for cider not to be drunk on the premises (*r*).
7. The shopkeeper's wine licence (*s*).
8. The table beer licence (*t*).
9. The beer-dealer's retail beer licence (*u*).
10. The shopkeeper's retail spirit or liqueur licence (*x*).

(*l*) For forms of licences, see Appendix.
(*m*) Act of 1828, s. 1, p. 30.
(*n*) 4 & 5 Will. 4, c. 85, s. 1, p. 61.
(*o*) Ibid.
(*p*) 23 Vict. c. 27, ss. 1, 7, pp. 66, 68.
(*q*) 1 Will. 4, c. 64, s. 2, p. 57.
(*r*) 1 Will. 4, c. 64, s. 30; 4 & 5 Will. 4, c. 85, s. 15, p. 60.
(*s*) 23 Vict. c. 27, ss. 1, 3, pp. 66, 67.
(*t*) 24 & 25 Vict. c. 21, s. 3, p. 65.
(*u*) 26 & 27 Vict. c. 33, s. 1, p. 65; preamble of Act of 1869, p. 56; 33 & 34 Vict. c. 29, s. 10, p. 65; Act of 1874, s. 31, p. 66.
(*x*) 24 & 25 Vict. c. 21, s. 2; Act of 1872, s. 68, p. 138.

11. The sweets licences (*y*).
12. The six-day licence (*z*).
13. The early closing licence (*a*).
14. The occasional licence (*b*).

All these licences, except Nos. 1, 10, 11, 12, 13 and 14, are termed certificates in the acts creating them; but the Act of 1872 gets rid of the nominal distinction between a certificate and a magistrates' licence.

The holder of the public-house licence (No. 1) may take out such excise licences as he pleases, with the reservation that he may not take out a spirit or wine licence, unless he first take out a beer licence (*c*). All other licences granted by the magistrates express on the face of them which excise licences, corresponding to the above magistrates' licences, they authorize to be taken out. If the magistrates grant permission to one person to take out more than one of these latter excise licences, the permission is comprehended in a single magistrates' licence (*d*).

The beer licences (Nos. 2 and 5), with their corresponding excise licences, authorize the sale of both beer and cider. The cider licences (Nos. 3 and 6) are for the sale of cider and perry only (*e*).

The refreshment-house wine licence (No. 4) is taken out by confectioners and eating-house keepers (*f*), and is for the sale of wine and sweets (*g*) (or home-made wine) to be drunk on the premises.

The shopkeeper's wine licence (No. 7) is taken out by persons keeping a shop for the sale of goods other than wine, and is for the sale of wine in quart or pint bottles only, not to be drunk on the premises.

(*y*) Act of 1872, s. 74, p. 152.
(*z*) Ib. s. 49, p. 134.
(*a*) Act of 1874, s. 7, p. 135.
(*b*) 25 Vict. c. 22, s. 13; 26 & 27 Vict. c. 33, ss. 19 & 20; 27 Vict. c. 18, s. 5. See pp. 16, 111—113.
(*c*) 6 Geo. 4, c. 81, s. 14.
(*d*) Act of 1874, s. 23, p. 126.
(*e*) 1 Will. 4, c. 64, s. 30, p. 60.
(*f*) 23 Vict. c. 27, s. 7, p. 68.
(*g*) 26 & 27 Vict. c. 33, s. 18; 33 & 34 Vict. c. 29, s. 3, p. 73.

The table-beer licence (No. 8) is taken out for the sale of beer, not to be drunk on the premises, at the rate of one penny halfpenny the quart.

The beer-dealer's retail beer licence (No. 9) is taken out by persons holding a strong beer dealer's wholesale excise licence, and is for the sale of beer by retail, not to be drunk on the premises.

The shopkeeper's retail spirit or liqueur licence (No. 10) is taken out by persons holding the spirit-dealer's retail spirit licence, and is for the sale of spirits, not to be drunk on the premises, in a shop used for the sale of other articles besides intoxicating liquors (*h*). This is one of the licences commonly termed "grocer's licences."

The sweets licences (No. 11) are licences corresponding to the wine licences (Nos. 4, 7) authorizing the sale of sweets instead of wine.

The six-day licence (No. 12) is grantable in respect of all liquors to be drunk on the premises, and compels the holder to close all Sunday.

The early-closing licence (No. 13) is also grantable in respect of all liquors to be drunk on the premises, and compels the holder to close an hour earlier at night than ordinary.

The occasional licence (No. 14) authorizes the sale of liquor by licensed persons, in other places than those authorized by their licences, upon special occasions, such as balls and fêtes.

The refreshment-house licence, which has been mentioned above as the foundation of the refreshment-house wine licence (No. 4), does not of itself authorize the sale of intoxicating liquors. It is an excise licence only, and must be taken out by all persons who keep their houses open for public refreshment, resort and entertainment between 10 P.M. and 5 A.M. (*i*).

(*h*) Act of 1872, s. 68, p. 148.
(*i*) 23 Vict. c. 27, ss. 3, 6, p. 67; 24 & 25 Vict. c. 91, s. 8; Act of 1874, s. 11, p. 109.

Disqualifications.

No licence for the sale of any liquors to be drunk on the premises, or for the sale of beer or spirits to be drunk off the premises, may be granted by the magistrates to a sheriff's officer or a process-server (*k*). No licence for the sale of liquor in any manner may be granted to a licensed person once convicted of keeping his house as a brothel (*l*). Neither spirits, wine, beer, nor cider may be sold by a person once convicted of felony, and neither wine, beer, nor cider may be sold by a person once convicted of selling spirits without licence (*m*), or forging a licence under the Act of 1869 (*n*). Upon a second conviction of sale of any other liquors without licence, the person convicted is liable to be declared disqualified for five years (*o*). Upon a third conviction of sale without licence the offender is liable to be declared disqualified for any number of years or for ever (*p*). Upon a second conviction of harbouring thieves the licence holder is disqualified for two years (*q*).

Disqualification also takes place upon repeated conviction of various offences which may be recorded on the licence. If any licensed person on whose licence two convictions of any such offences have been recorded is convicted of a recordable offence, he is ipso facto disqualified for five years from the date of the third conviction (*r*). The offences which may be recorded on the licence are as follow :—

1. Selling liquor to be drunk on the premises in excess of licence (*s*).

(*k*) Act of 1828, s. 16, p. 46; 1 Will. 4, c. 64, s. 2, p. 57.
(*l*) Act of 1872, s. 15, p. 91.
(*m*) 3 & 4 Vict. c. 61, s. 7 (beer); 23 Vict. c. 27, s. 22 (wine); 33 & 34 Vict. c. 29, s. 14 (spirits).
(*n*) Act of 1869, s. 11, p. 75.
(*o*) Act of 1872, s. 3, p. 81.
(*p*) Ib.
(*q*) 34 & 35 Vict. c. 112, s. 10.
(*r*) Act of 1872, s. 30, p. 114; Act of 1874, s. 13, p. 113.
(*s*) Act of 1872, s. 5, p. 85.

2. Sending liquor to be drunk off the premises in evasion of licence (*t*).
3. Permitting drunkenness, or selling liquor to drunken person (*u*).
4. Harbouring prostitutes (*x*).
5. Harbouring, giving refreshment to, or bribing constable (*y*).
6. Permitting gaming, unlawful games, or keeping house as betting-house (*z*).
7. Adulteration (*a*).
8. Selling in closing hours (*b*).
9. Refusal to admit constable (*c*).

The licensed premises themselves are besides liable to be declared disqualified for a period of two years upon a third recordable conviction taking place after two convictions have been recorded on the licence (*d*). Premises are also disqualified for one year—(1) when four convictions, whether of the same or different licensed occupiers, have been registered against them within five years, all recorded convictions being registered against the premises except the first, and (2) upon the forfeiture of a licence by two licensed occupiers within two years (*e*). These two last disqualifications do not take place upon convictions of persons licensed in respect of the same premises before the year 1872 (*f*). Upon two convictions for harbouring thieves within three years, whether of the same licence holder or not, the premises are disqualified for a term not more than a year (*g*). Notice of every recorded

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(*t*) Act of 1872, s. 6, pp. 85, 86.
(*u*) Ib. s. 13, p. 89.
(*x*) Ib. s. 14, p. 90.
(*y*) Ib. s. 16, p. 92.
(*z*) Ib. s. 17, p. 93.
(*a*) Act of 1874, s. 14, p. 95.
(*b*) Ib. ss. 9, 13, pp. 101, 113; Act of 1872, s. 28, p. 110.
(*c*) Act of 1874, ss. 13, 16, pp. 113, 117.
(*d*) Act of 1872, s. 30, p. 114.
(*e*) Ib. s. 31, p. 115.
(*f*) Ib.
(*g*) 34 & 35 Vict. c. 112, s. 10.

conviction must be given to the owner of the premises, and in the case of an order of disqualification the order must be cancelled, if the owner proves that he could not legally have evicted his tenant (*h*).

Premises are subject to various disqualifications on the ground of value. Except in the case of a railway refreshment room, no premises may, after the Act of 1872, be licensed as a public-house unless they be of the value of 50*l.* a-year in a town of 100,000 inhabitants, or 30*l.* in a town of 10,000 inhabitants, or of 15*l.* at the least if situate elsewhere; and no premises may, after the same act, have granted to them any other kind of licence for the sale of liquor to be drunk on the premises unless they be of the value of 30*l.* a-year in a town of 100,000 inhabitants, or of 20*l.* a-year in a town of 10,000 inhabitants, or of 12*l.* a-year if situate elsewhere (*i*). All premises used for the sale of liquor for consumption thereupon must also be structurally adapted to the purpose for which they are used (*k*).

With respect to houses which held the public-house licence before the year 1872, no property qualification was then requisite nor is it now required; but with respect to houses to which before 1872 were attached the licences numbered from 2 to 9 for the retail of beer and cider and wine, whether to be drunk on or off the premises, a property qualification was necessary before 1872, and no renewal of any one of those licences, and no new licence of those numbered 5, 6, 7 and 9 (being for the sale of liquors not to be drunk on the premises), may be granted to a house not satisfying that qualification as enhanced by the substitution of annual for rateable value in the qualification test (*l*). The requisite annual value is, for the beer licences (*m*), 15*l.*, if the

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(*h*) Act of 1872, s. 56, p. 142.
(*i*) Ib. s. 45, p. 113.
(*k*) Ib.
(*l*) Ib. s. 46, p. 133.
(*m*) 3 & 4 Vict. c. 61, s. 1, p. 62; 33 & 34 Vict. c. 29, s. 10, p. 65.

house be situate in the metropolis or in a town of above 10,000 inhabitants, 11*l.*, if in a town of 2,500 inhabitants, and 8*l.*, if situate elsewhere; and for the wine licence, 20*l.*, if situate in a town of above 10,000 inhabitants, and 10*l.*, if situate elsewhere (*n*).

The justices may order the premises to be valued at the expense of the applicant (*o*).

Licensing Authority.

The licensing authority is in counties the county magistrates, and in boroughs the borough magistrates (*p*), except in the universities, where it is in general the vice-chancellor, and in the borough of St. Alban's, where it is the mayor and burgesses (*q*). No brewer, distiller or maltster, including a partner or shareholder in a business of the kind, may act as a licensing magistrate in his own licensing district, and no owner, owner's agent, or person interested in the profits of any premises may act in reference to those premises. The penalty for acting when disqualified is 100*l.* (*r*). Stipendiary magistrates may act as licensing justices, except in the metropolis (*s*).

General licensing meetings are held in every division of a county, and in every borough having a separate commission of the peace, within the first ten days of March in Middlesex and Surrey, and on some day between the 20th August and the 14th September in other counties (*t*). These meetings, held in the first instance at some place most convenient to the magistrates, may be held by adjournment at any other places which in the opinion of the magistrates will best suit the convenience of persons intending to apply for licences (*u*). Public notice is given of the time

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(*n*) 23 Vict. c. 27, s. 8, p. 64.
(*o*) Act of 1872, s. 47, p. 133.
(*p*) Act of 1828, s. 1, p. 30.
(*q*) Act of 1872, s. 72, p. 152.
(*r*) Ib. s. 60, p. 145.
(*s*) Ib. s. 39, p. 127.
(*t*) Act of 1828, s. 1, p. 30.
(*u*) Ib. s. 3, p. 35.

and place of all the meetings, and a copy of the public notice must be given to each person who has signified his intention of applying for a new licence, and to applicants for a renewal of a licence who may have been required to attend (*x*). Application for a licence may be made either at the general meeting or at the adjourned meeting, but no adjourned meeting is held except in March for Middlesex and Surrey, and in August or September for the other counties (*y*).

The licensing authority is differently constituted according as it has to deal with the grant of new licences, or the renewal of old ones, and also according as the licence is for the sale of liquors to be drunk on the premises, or for the sale of liquors to be drunk off the premises. With regard to the grant of new licences of the most important class, that is, licences "in respect of premises in respect of which a similar licence has not been theretofore granted" (*z*) for the sale of liquors to be drunk on the premises (*a*), the licensing authority is distributed between an original and confirming body, the constitution of which differs in counties from that in boroughs.

In counties new licences are granted by two or more justices at the general annual meeting. All questions are decided by the majority of the justices present. Without a clear majority, no licence can be granted. The grant, if requiring confirmation, must then be confirmed by a second body of county justices, called the "county licensing committee." This committee is annually appointed at quarter sessions. It consists of not less than three nor more than twelve members; three forming the quorum (*b*).

In boroughs where there are ten acting justices new licences are granted by a borough licensing committee.

(*x*) Act of 1828, ss. 2, 5, pp. 34, 37; Act of 1874, s. 26, p. 130.
(*y*) Act of 1828, s. 1, p. 31.
(*z*) Act of 1828, s. 1, p. 31; Act of 1874, s. 32.
(*a*) Act of 1872, ss. 37, 38; Act of 1874, s. 24, p. 126.
(*b*) Act of 1872, s. 37, p. 120.

This committee is appointed by the justices acting for the borough. It consists of not less than three nor more than seven members; three forming the quorum. The grant, if requiring confirmation, must then be confirmed by the whole body of borough justices present at a meeting held for the purpose of confirmation, or by a majority of them, in case of a division of opinion (*c*).

In boroughs where there are not ten acting justices, new licences are granted by two or more borough justices, as in counties. The grant, if requiring confirmation, must then be confirmed by a joint committee consisting of three borough justices appointed by the whole body of borough justices, and of three county justices appointed by the county licensing committee. Where there are not for the time being three qualified borough justices to form the quota of a joint committee, the deficiency in number is supplied by county justices (*d*). The quorum of the joint committee is five members, the chairman is the senior magistrate present, who has a casting-vote in the event of an equal division (*e*).

Licences for the sale of liquor to be drunk off the premises require no confirmation (*f*).

Old licences, both in counties and in boroughs, are renewed by two or more justices at the general annual meeting (*g*).

In respect of what are called "occasional licences," the licensing authority is shared between the commissioners of inland revenue and the magistrates (*h*). The consent in writing of one of the justices usually acting at the petty sessions is first obtained, and thereupon the commissioners of inland revenue may, if they think proper, authorize the issuing of an occasional licence

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(*c*) Act of 1872, s. 38, p. 122.
(*d*) Ib. p. 123; Act of 1874, s. 21, p. 124.
(*e*) Act of 1872, s. 38, p. 124.
(*f*) Act of 1874, s. 24, p. 126.
(*g*) See "Renewals," infra, p. 19.
(*h*) 25 Vict. c. 22, s. 13; 26 & 27 Vict. c. 33, ss. 19, 20; 27 Vict. c. 18, s. 5. See p. 111.

to any person licensed to sell liquors to be drunk on the premises. The licence allows sale elsewhere than on the licensed premises during the time between such hours not earlier than sunrise or later than ten o'clock at night, as may be specified in the written consent of the justice. In the case of public dinners and balls, the time of sale may be indefinitely extended as the justice may specify in his consent. An occasional licence is now necessary for sale at fairs and races (*i*). The term "occasional licence" is also applied to exemptions from closing on special occasions (*k*).

Application for New Licence.

Every person intending to apply for the grant of a new licence, either at the licensing meeting or at an adjournment of it, must, twenty-one days at least before he applies, give notice of his intention to one of the overseers of the parish, and to the superintendent of police of the district in which the premises proposed to be licensed are situate. The notice must state the name and address of the applicant, the description of licence to be applied for, and the situation of the premises (*l*), and may be served by a registered letter through the post. A like notice must also, within the space of twenty-eight days before the application is made, be affixed and maintained between the hours of 10 A.M. and 5 P.M. on two consecutive Sundays on the door of the premises, and also on the door of the church or chapel of the parish in which the premises are situate. The applicant must also advertise the notice in some newspaper circulating in the neighbourhood on some day not more than four nor less than two weeks before the application (*m*). In the case of beer, cider

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(*i*) 25 Vict. c. 22; 26 & 27 Vict. c. 33, s. 21; Act of 1874, ss. 18, 19.

(*k*) See "Management of Licensed Houses," infra, p. 23.

(*l*) For form of notice, see Appendix.

(*m*) Act of 1869, s. 7, p. 71; 33 & 34 Vict. c. 29, s. 4, p. 73; Act of 1872, s. 40, p. 127.

and wine licences, the justices may adjourn the meeting in order to give the applicant an opportunity of supplying an accidental omission to give the prescribed notices (*n*). A beer-dealer's retail beer licence may be granted at special sessions, as well as at the general annual meeting (*o*).

Application may be made for the provisional grant of a licence in respect of a house about to be built and used for the sale of liquor to be consumed therein, and the same notices as above, mutatis mutandis, must be given by the applicant (*p*).

Hearing of Application for New Licence.

The applicant must attend before the licensing justices in person, unless hindered by illness or other reasonable cause, in which case he may authorize another person to attend for him (*q*). Any person may oppose the granting of the licence upon any reasonable grounds; and the justices are bound to hear all reasonable evidence tendered both by the applicant and his opponents, which evidence they may require to be given on oath (*r*). Subject to the necessity of hearing evidence, the justices have the most absolute and uncontrolled discretion to grant or refuse the licence (*s*), except in the cases of applications for licences for the sale of liquors not to be drunk on the premises. In the excepted cases the application cannot be refused, except on the ground either that (1) the applicant's good character is not satisfactorily proved, or (2) that the premises proposed to be licensed are of a disorderly character, or (3) that the applicant has already forfeited or has been disqualified from receiving any licence through misconduct, or (4) that the applicant

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(*n*) 33 & 34 Vict. c. 29, s. 11, p. 74.
(*o*) Act of 1874, s. 31, p. 126.
(*p*) Ib. s. 22, p. 124.
(*q*) Act of 1828, s. 12, p. 39.
(*r*) 14 & 15 Vict. c. 99, s. 16.
(*s*) Act of 1828, s. 1, p. 30.

is not duly qualified (*t*). In case of a refusal upon the last ground, the justices must specify the grounds of their decision in writing. If the licence be refused, the applicant can proceed no further, as there is no appeal in such a case (*u*). If the application be granted, it has still to be taken before the confirming body of justices (*x*), except in the case of a licence to sell liquor to be drunk off the premises, which does not require confirmation (*y*).

The hearing before the confirming body has generally the same incidents as the original hearing; but no person can oppose the confirmation who did not oppose the original grant, and the confirming body has power to give costs to the successful party (*z*).

Where the application is for a provisional grant or confirmation, plans of the proposed structure must be submitted to the licensing justice or confirming authority as the case may be. Either body has an absolute discretion to make or refuse the provisional grant, but the subsequent ratification of it is dependent merely on the justices being satisfied that the house has been completed in accordance with the plans, and that no objection can be made to the character of the proposed holder (*a*).

Renewals.

All licences continue in force for a year only (*b*); but the licence holder who, during the continuance of his licence, obtains a licence for the ensuing year, is said to renew his licence, and is on a much more favourable footing than the applicant for a new licence.

(*t*) Act of 1869, s. 8, p. 71. As to the discretion on renewals, see "Renewals."

(*u*) Act of 1872, s. 75, and Sched. repealing Act of 1828, s. 27, p. 156; Act of 1874, s. 27, p. 158.

(*x*) Act of 1872, ss. 37, 38, pp. 120, 122.

(*y*) Act of 1874, s. 24, p. 126.

(*z*) Act of 1872, s. 43, p. 130.

(*a*) Act of 1874, s. 22, p. 124.

(*b*) Act of 1828, s. 13, p. 39; of 1869, s. 6, p. 70.

Renewal of a licence is made at the general annual licensing meeting or an adjournment of it. No notice of application is necessary, nor need the applicant attend in person unless required by the justices, who have no power to require his attendance, except for some special cause personal to himself. No evidence can be given against the renewal, except after seven days' written notice of opposition given to the licence holder, which notice may be sent by post, and must state in general terms the grounds of opposition. The justices have the same discretion with respect to renewals as they have with respect to new licences, but they may not refuse to renew without having given the applicant a hearing, or having summoned him to attend (*c*).

In the case of houses which held a licence on the 1st May, 1869, renewals of licences for beer, cider or wine (Nos. 2, 3, 4) to be drunk on the premises may not be refused, except upon the same grounds affecting character and qualification as those upon which no new licence, or renewal for beer, cider and wine not to be drunk on the premises may be refused (*d*). Renewals of the shopkeeper's spirit licence may not be refused, except upon similar grounds (*e*). Upon the hearing of any application for renewal, all evidence must be given on oath (*f*).

No grant of a renewal may be appealed against; but in every case of a refusal to renew, whether by borough or county justices, an appeal (*g*) lies to the county justices in quarter sessions. Notice in writing must be given to all the justices who took part in the refusal within five days after the refusal, and the appellant must enter into a recognizance with two sureties conditioned to appear and try the appeal. No justice

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(*c*) Act of 1872, s. 42, p. 129; Act of 1874, s. 26, p. 130; for forms of notice and requisition, see Appendix.
(*d*) Act of 1869, s. 19, p. 76.
(*e*) Act of 1872, s. 69.
(*f*) Ib. s. 42, p. 129.
(*g*) Act of 1828, s. 27, p. 48; of 1869, s. 8, p. 71.

may try the appeal who took part in the refusal (*h*). If the appeal succeed, the court of quarter sessions renews the licence, and the costs of the justices below may be paid by the county treasurer. If the appeal fail, such costs are paid by the appellant, and are recoverable by distress and imprisonment. The appellant's own costs must be borne by himself in either event. Excise licences are renewed by the commissioners of inland revenue on giving twenty-one days' notice before the expiration of the existing licence. If the magistrates' licence expire before the excise licence, and a renewal of the magistrates' licence is refused, the licence holder is entitled to a return of a proportionate part of the duty (*i*).

Transfers.

A licence expires prematurely, either upon the death of the licence holder or upon his removal from the licensed premises, unless it be transferred to some other person. The transfer of a licence may be made by the licensing authority from one occupier of licensed premises to his successor, or in certain cases from old premises to new in respect of the same person (*k*). Transfers are made (1) on change of occupancy, (2) on change of occupancy where the previous occupant has not applied for renewal at the last licensing meeting, (3) upon transmission of interest in licensed premises by the death, incapacity or bankruptcy of the licence holder, and (4) to new premises in cases where the licensed premises have unavoidably become unfit for their purpose. The licence holder must give fourteen days' notice (*l*) of his intention to get the licence transferred. The notice (which may be sent by post) must be given to one of the overseers of the parish,

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(*h*) Act of 1828, s. 27, p. 48.
(*i*) 6 Geo. 4, c. 81.
(*k*) Act of 1828, ss. 4, 14, pp. 36, 40; 33 & 34 Vict. c. 29, s. 4, p. 73.
(*l*) For form of notice, see Appendix.

and to the superintendent of police of the district, and must state the name, address and occupation of the proposed transferee (*m*). There are also provisions to enable a licence holder to obtain at a licensing meeting a removal of his licence to fresh premises within the same or an adjoining licensing division with the consent of all interested parties. The order of removal must be confirmed as a new licence (*n*). A provisional grant and confirmation may also be made in respect of a removal (*o*).

Transfers may be made at the general annual meeting, but there are besides not less than four nor more than eight special sessions held every year for the express purpose of granting them. The number is appointed at each licensing meeting. Public notice is given of the time and place in the same manner as of the general annual meeting. Temporary transfers are made by justices in petty sessions, by virtue of which the licence is valid in the hands of the transferee until the next ensuing special sessions at which the application for the transfer is again heard (*p*). Both at petty sessions and at special sessions, the justices have an absolute discretion to grant or refuse the transfer. In the case of transmission upon death or bankruptcy, the representative of the licence holder may carry on the business until the next special sessions, without incurring the penalties of sale without licence (*q*). The excise licence is transferred to the new holder by indorsement under the hands of the inland revenue commissioners without any payment of duty (*r*).

Against a refusal by justices in special sessions to transfer a licence there is an appeal to justices in quarter sessions; and this appeal must be made under

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(*m*) Act of 1872, s. 40, subs. 2, p. 127.
(*n*) Ib. s. 50, p. 136.
(*o*) Act of 1874, s. 22, p. 124.
(*p*) Act of 1828, s. 4, p. 36; 5 & 6 Vict. c. 44, s. 1, p. 42.
(*q*) Act of 1872, s. 3, p. 86.
(*r*) 6 Geo. 4, c. 81, s. 21.

the same conditions and with the same formalities as an appeal against a refusal to renew (*s*).

Management of Licensed Houses, and Closing Hours.

Any sale by retail of half a pint of liquor or more must be by standard measure (*t*). A licence holder must keep his name painted on his premises, with a designation of the nature of his licence in such form as the licensing justices from time to time direct (*u*). Drunken or disorderly persons may be excluded from licensed premises (*x*). A constable may, for the purpose of preventing or detecting a violation of the law, enter licensed premises at all times (*y*). In every licensing district a register is kept containing the particulars of every licence, the names of the owners of the premises, and forfeitures, disqualification of premises, and records of convictions (*z*).

Licensed premises must be closed at the following hours, during which no liquors may be sold except to travellers and lodgers :—

(1.) In the metropolitan district :—

On Sundays, &c.—During the whole day till 1 P.M., from 3 to 6 P.M. and after 11 P.M.

On Saturdays.—At 12 at night.

On other week days.—From half-past 12 at night to 5 A.M. (*a*).

(2.) In the metropolitan police district, in "towns" and in "populous places" :—

On Sundays, &c.—During the whole day till 12.30 P.M., or, if the justices order,

(*s*) Act of 1828, s. 27, p. 48; of 1869, s. 8, p. 71.
(*t*) Act of 1872, s. 8, p. 86.
(*u*) Ib. s. 11; Act of 1874, s. 28, pp. 87, 88.
(*x*) Act of 1872, s. 18, p. 94.
(*y*) Act of 1874, s. 16, p. 117.
(*z*) Act of 1872, s. 36, p. 119.
(*a*) Act of 1874, s. 3, subs. 1, p. 97.

1 P.M.; from 2.30 P.M. (or, if 1 P.M. be the hour of opening, from 3 P.M.) to 6 P.M., and after 10 P.M.

On week days.—Till 6 A.M. and after 11 P.M.(*b*)

(3.) In all other places :—

On Sundays, &c.—As in (2).

On week days.—Till 6 A.M. and after 10 P.M. (*c*).

A town is defined as an urban sanitary district containing 1,000 inhabitants, and power is given to the county licensing committee to include within such "town" for closing purposes any collection of houses adjacent to it. A "populous place" is defined as any area with a population of not less than 1,000, which, by reason of the density of such population, the county licensing committee may determine to be a populous place (*d*).

The holder of the refreshment house wine licence must close every night at ten (*e*), and the holder of the refreshment house licence must close at the hour of the night or morning at which houses for the sale of intoxicating liquors in his district are required to be closed (*f*). Refreshment houses, however, if not licensed for the sale of liquor, may everywhere be opened at four in the morning (*g*).

A particular power of exempting from closing regulations is vested in certain local authorities, that is, in the metropolis the commissioners of police, and in other places two justices of the peace in petty sessions, who may, in their discretion, grant orders of exemption from closing (except from 1 A.M. to 2 A.M.) in favour of houses in the immediate neighbourhood of markets, or places where a considerable body of persons follow

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(*b*) Act of 1874, s. 3, subs. 2, p. 97.
(*c*) Ib. subs. 3, p. 97.
(*d*) Ib. s. 32, p. 158.
(*e*) Act of 1872, s. 28, p. 110.
(*f*) Act of 1874, s. 11, p. 109.
(*g*) 27 & 28 Vict. c. 64.

a lawful trade (*h*). The same authorities may also grant occasional licences on special occasions, exempting the holder altogether from closing regulations during specified hours upon that occasion (*i*).

The closing regulations do not prevent licensed persons from entertaining their private friends (*k*).

Forfeiture of Licence.

Upon conviction for certain specified offences, the holder of a licence is deprived of the benefit of it before the end of the year for which it was granted. The offences for which a licence is forfeited, upon a first conviction, are :—Making communication with unlicensed premises of public resort (*l*), and permitting premises to become a brothel (*m*). Upon a second conviction :—Sale without licence (*n*). And upon a third conviction, after two recorded convictions :—Selling liquors in excess of licence, carrying liquors away to be drunk in excess of licence, permitting drunkenness, or selling liquor to a drunken person, harbouring prostitutes, harbouring, giving refreshment to, or bribing a constable, suffering gaming, or unlawful games, or keeping house as a betting-house, adulteration, selling in closing hours, and obstructing a constable, convictions for each of which offences are recordable upon the licence (*o*).

A licence may also be declared forfeited upon conviction of the holder of allowing an unlawful or seditious meeting to be held on his premises (*p*), or of harbouring thieves (*q*).

Wherever a licensed person suffers a conviction

(*h*) Act of 1872, s. 26, p. 106.
(*i*) Ib. s. 29, p. 111.
(*k*) Act of 1874, s. 30, p. 106.
(*l*) Act of 1872, s. 9, p. 86.
(*m*) Ib. s. 15, p. 91.
(*n*) Ib. s. 3, p. 80.
(*o*) See "Disqualifications," p. 11.
(*p*) 39 Geo. 3, c. 79, s. 14; 57 Geo. 3, c. 19, s. 29.
(*q*) 34 & 35 Vict. c. 112, s. 10.

which disqualifies him from selling under his licence, it is practically forfeited. Power is given by the Act of 1874, where a forfeiture or a disqualification takes place for making an internal communication with unlicensed premises, for forging a licence, for selling spirits without licence, or for any felony, for the owner to apply to petty and special sessions respectively, as for a transfer of the licence (*r*).

Offences.

Offences in relation to the sale of liquor may be divided into offences by a licence holder and offences by other persons. Offences by a licence holder may again be divided according as convictions for them are recordable upon the licence or not. Those convictions which are so recordable have, when repeated, the effect of producing forfeiture and disqualification, as already stated.

An appeal lies to quarter sessions upon convictions (*s*). Persons disqualified by being brewers, &c. are forbidden from acting as licensing magistrates from taking part in the hearing of charges, except that of drunkenness in a public place (*t*). The defendant and his wife are competent to give evidence (*u*). The minimum penalty of 20*s*. is prescribed in the case of any second conviction of a licensed person (*x*). In default of payment of the penalty upon distress, the offenders may be imprisoned according to the following scale (*y*) :—If the penalty do not exceed 10*s*., seven days; if the penalty exceed 10*s*., and do not exceed 1*l*., fourteen days; if it exceed 2*l*. but not 5*l*., two months; if it exceed 5*l*. but not 10*l*., three

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(*r*) Act of 1874, s. 15, p. 144.
(*s*) Act of 1872, s. 52, p. 140.
(*t*) Ib. s. 60, p. 145.
(*u*) Ib. s. 51, subs. 4, p. 137.
(*x*) Act of 1874, s. 12, p. 148.
(*y*) 28 & 29 Vict. c. 127, s. 4; Act of 1872, s. 51, subs. 2.

months; if it exceed 10*l.* but not 30*l.*, four months; if it exceed 30*l.* but not 50*l.*, six months; if it exceed 50*l.*, one year. The following is a list of offences and penalties :—

Offence.	Maximum Penalty.	Special effect of Conviction.	Statutes.
Sale without licence or in place not authorized by licence.	1st offence, 50*l.*, or one month's imprisonment; 2nd offence, 100*l.*, or three months; 3rd offence, 100*l.*, or six months.	2nd offence, forfeiture of licence, and, by order of Court, disqualification for five years; 3rd offence, disqualification for ever, by order of Court.	Act of 1872, s. 3; see also 35 Geo. 3, c. 113, s. 1. For excise penalties see 1 Will. 4, c. 64, s. 7, and 4 & 5 Will. 4, c. 85, s. 17 (beer); 23 Vict. c. 27, s. 19 (wine); and 6 Geo. 4, c. 81, s. 26 (all liquors).
Being found on premises where liquors illegally sold.	Each offence, 2*l.*	None.	Act of 1874, s. 17.
Refusing to give name and address to constable under above circumstances.	Each offence, 5*l.*	None.	Act of 1874, s. 17.
Allowing purchaser to drink on the premises or adjoining highway in evasion of licence to sell liquor not to be drunk on the premises.	1st offence, 10*l.*; Subsequent offence, 20*l.*	Recordable on licence.	Act of 1872, s. 5; Act of 1874, s. 13.
Evasion of licence to sell liquor not to be drunk on the premises by carrying the liquor elsewhere for consumption.	The same.	Recordable on licence.	Act of 1872, s. 6; Act of 1874, s. 13.
Sale of spirits to children to be drunk on the premises.	1st offence, 1*l.*; Subsequent offence, 2*l.*	None.	Act of 1872, s. 7.
Not using standard measures.	1st offence, 10*l.*; Subsequent offence, 20*l.*	Liability to forfeit measures used.	Act of 1872, s. 8; 5 & 6 Will. 4, c. 63 (Weights and Measures Act), s. 63.
Making communication with unlicensed house of public resort.	10*l.* a day.	Forfeiture of licence, which may be transferred to owner.	Act of 1872, s. 9; 2 & 3 Vict. c 47, s. 45; Act of 1874, s. 15.
Storing liquors not authorised by licence.	1st offence, 10*l.* Subsequent offence, 20*l.*	Forfeiture of liquor.	Act of 1872, s. 10.
Not putting up descriptive board.	The same.	None.	Act of 1872, s. 11; Act of 1874, s. 28; For excise penalty see 6 Geo. 4, c. 81, s. 25.
Permitting drunkenness, or selling liquor to drunken person.	The same.	Recordable on licence.	Act of 1872, s. 13; Act of 1874, s. 13.

Offence.	Maximum Penalty.	Special effect of Conviction.	Statutes.
Harbouring prostitutes.	1st offence, 10*l.*; Subsequent offence, 20*l.*	Recordable on licence.	Act of 1872, s. 14; Act of 1874, s. 13; 10 & 11 Vict. c. 89 (Town Police Clauses Act), s. 35.
Harbouring thieves.	Each offence, 10*l.*, or four months' imprisonment.	1st offence, forfeiture by order of Court; 2nd offence, ipso facto forfeiture and two years' disqualification.	34 & 35 Vict. c. 112 (Prevention of Crime Act, 1871), s. 10. 10 & 11 Vict. c. 89, s. 5.
Using premises as a brothel.	Each offence, 20*l.*	Forfeiture of licence; disqualification for ever.	Act of 1872, s. 15.
Harbouring, giving refreshment to, or bribing constable.	1st offence, 10*l.*; Subsequent offence, 20*l.*	Recordable on licence.	Act of 1872, s. 16; Act of 1874, s. 13.
Permitting gaming, unlawful games, or contravening Betting House Act.	The same.	Recordable on licence.	Act of 1872, s. 17; Act of 1874, s. 13; 16 & 17 Vict. c. 119.
Allowing seditious meetings.	5*l.*	Forfeiture by order of Court.	39 Geo. 3, c. 79, s. 14; 57 Geo. 3, c. 19, s. 29.
Adulteration.	As in general Adulteration Acts.	Recordable on licence.	23 & 24 Vict. c. 84, and 35 & 36 Vict. c. 74; Act of 1874, s. 13. For excise penalties on adulteration of beer, see 56 Geo. 3, c. 58.
Disobedience of order of closing in case of riot.	Each offence, 50*l.*	None.	Act of 1872, s. 23.
Selling during closing hours.	1st offence, 10*l.*; Subsequent offence, 20*l.*	Recordable on licence.	Act of 1874, ss. 9, 13; Act of 1872, s. 28 (as to refreshment wine-houses).
Failing to exhibit notice of order of exemption from closing.	Each offence, 5*l.*	None.	Act of 1872, s. 26.
Exhibition of notice by person not holding order.	Each offence, 10*l.*	None.	Act of 1872, s. 26.
Defacing record of conviction.	Each offence, 5*l.*	None.	Act of 1872, s. 34.
Forgery of magistrates' certificate.	Each offence, 20*l.*, or six months' imprisonment.	Disqualification for wine and beer licences. Licence transferable to owner.	Wine and Beerhouse Act, 1869, s. 11; Act of 1874, s. 15.
Refusal to admit constable.	1st offence, 5*l.*; Subsequent offence, 10*l.*	Recordable on licence.	Act of 1874, s. 16.
Refusal to produce licence, or order of exemption from closing.	Each offence, 10*l.*	None.	Act of 1872, s. 64.

Offence.	Maximum Penalty.	Special effect of Conviction.	Statutes.
Allowing liquor to be drunk in refreshment-house, not licensed for liquors, during the closing hours of licensed houses.	1st offence, 10*l.*; Subsequent offence, 20*l.*	None.	Act of 1872, s. 27.
Drunkenness in public place.	Ten shillings; 2nd offence within twelve months, 1*l.* Subsequent offence within 12 months, 2*l.* On nonpayment, hard labour.	None.	Act of 1872, s. 12.
Drunkenness in public place accompanied by disorder.	2*l.*, or one month's imprisonment, with hard labour.	None.	Act of 1872, s. 12.
Drunkenness on highway of drivers or drovers, or of any person in possession of fire-arms.	The same.	None.	Act of 1872, s. 12.
Refusal to quit licensed premises.	Each offence, 5*l.* On nonpayment, hard labour.	None.	Act of 1872, s. 18.
Being found on premises during closing hours.	Each offence, 2*l.*	None.	Act of 1872, s. 25.
Falsely pretending to be a traveller or lodger.	Each offence, 5*l.*	None.	Act of 1872, s. 25; As to directing prosecution, see Act of 1874, s. 10.
Giving false name and address to constable.	The same.	None.	Act of 1872, s. 25.
Clerks to justices taking larger fees than those authorized.	The same.	None.	Act of 1828, s. 15; Act of 1872, s. 36.

II.

THE LICENSING ACT, 1828, AND ITS AMENDING ACT.

9 Geo. IV. cap. 61.*

An Act to regulate the granting of Licences to Keepers of Inns, Alehouses and Victualling Houses in England. [15th July, 1828.]

General annual licensing meeting.

Whereas it is expedient to reduce into one act the laws relative to the licensing by justices of the peace of persons keeping or being about to keep inns, alehouses and victualling houses, to sell exciseable liquors by retail, to be drunk or consumed on the premises, in that part of the united kingdom called England: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of

To be held throughout England;—

the same, that in every division of every county and riding, and of every division of the county of Lincoln, and in every hundred of every county not being within any such division, and in every liberty, division of every liberty, county of a city, county of a town, city and town corporate in that part of the united kingdom called England, there shall be annually holden a special session of the justices of the peace (to be called the General Annual Licensing Meeting), for the purpose of granting licences to persons keeping or being about to keep inns, alehouses, and victualling houses, to sell exciseable liquors by retail, to be drunk or consumed on the premises therein specified; and that such meetings shall be holden in the counties of Middlesex and

in March for Middlesex and Surrey,

* Before 1872 this Act was best known as the "Alehouse Act." In the Licensing Acts, 1872, 1874, it is termed the "Intoxicating Liquor Licensing Act, 1828." See sect. 74 of the Act of 1872, p. 152.

Surrey within the first ten days of the month of March, and in every other county on some day between the twentieth day of August and the fourteenth day of September inclusive; and that it shall be lawful for the justices acting in and for such county or place assembled at such meeting, or at any adjournment thereof, and not as hereinafter disqualified from acting, to grant licences for the purposes aforesaid, to such persons as they the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper.

and in August and September for other counties.

Common law right.

At common law any person might if he pleased open a house for the entertainment of travellers and others, or for the sale of liquor (*Morgan* v. *Palmer*, 2 B. & C. 734), subject to liability to indictment for harbouring thieves or suffering riotous conduct. (Hawkins, 7th ed. vol. ii. ch. 78.) The keeping of an inn was never a franchise so as to require a licence from the sovereign (2 Roll. Abr. 84), and so the keeper of an ancient inn has no right of action against a new comer who may interfere with his trade: but it is said by Hale (Summary, P. C. 146), and confirmed by Hawkins, that to erect an inn where there are enough ancient inns before, is a common nuisance, which may be presented and fined. This would seem to mean that where the combined effect of the old houses and the new is a common nuisance, the new house may be indicted, for to constitute an indictable nuisance, there must be a nuisance in fact. (*R.* v. *Davey*, 5 Esp. 217.)

Old statutes.

The common law right was first restricted by 11 Hen. 7, c. 2, s. 5, enacting "that it be laufull to ii Justices of the peas whereof one shall be of the quorum, to rejecte and put away comen ale selling in Tounes and places where they shall thinke convenyent, and to take suretie of the kepers of ale-houses of their gode behavying by the discrecion of the said Justices, and in the same to be avysed and aggreed at the tyme of their sessions." The next act was 5 & 6 Edw. 6, c. 25, enacting that "none should be suffered to keep any common ale-house or tippling house, except in fairs, but such as should be allowed in open sessions, or by Two Justices of the Peace." This act did not extend to inns not also used as ale-houses. (Dalton's Justice, tit. Innkeeper, ch. 56; 1 Salk. 45.) The act of Henry the Seventh was repealed by 21 Jac. 1, c. 28; that of Edward the Sixth, together with twenty subsequent enactments, by section 35 of the present act. Under this act justices have power to grant licences to none but "keepers of inns, ale-houses or victualling-houses." (See *R.* v. *Wilkinson*, 10 L. T. 370.) All three are places of public resort. "Inns" are houses where the traveller is furnished with everything for which he has occasion whilst on his way (*Thompson* v. *Lacey* 3 B. & Ald. 283, per Bayley, J.), and where the traveller (*R.* v. *Luellin*, 12 Mod.) may demand both victuals and lodging as of right if there be room for him, the inn-keeper being liable both to action and indictment upon refusal. (Hawkins, ch. 78; see also *Kirkman* v. *Shawcross*, 5 T. R. 17; *Parker* v. *Flint*, 12 Mod. 254.) Neither a boarding-house (*Parker* v. *Flint*, ib.; *Dansey* v. *Richardson*, 3 E. & B. 159) nor a lodging-house (*Holder* v. *Soulby*, 8 C. B.,

Inns, ale-houses, &c.

N. S. 254) is an inn so as to render it incumbent upon the keepers of them to receive guests. (See *Calye's case*, 8 Coke, 32 ; Sm. L. C. vol. 2.) Ale-houses and victualling-houses are houses commonly used for the purposes which their names imply, and it would seem that travellers, and perhaps also the public, have the same right to entertainment in them, so far as they profess to offer it, as in inns. (*Six Carpenters' case*, 8 Coke, 146, and Sm. L. C. vol. 2.)

"Exciseable liquors."

Although this section strictly authorizes the grant of a licence to sell exciseable liquors, yet in effect it authorizes the grant of a licence to keep an inn, ale-house, or victualling-house, as the licence to keep such a house, and not the licence to sell exciseable liquors, is the condition precedent to the obtaining of the excise licences which may be taken out by the holder of the Public House Licence. (See note to section 17.) The holder of the public-house licence under this act may take out what excise licences he pleases under the Excise Act, 6 Geo. 4, c. 81, provided that he take out a beer licence before a spirit licence. (6 Geo. 4, c. 81, s. 14.) These excise licences are altogether distinct from the excise licences for the sale of beer, cider and wine requiring each a special magistrates' licence, under the Wine and Beerhouse Act, which are provided for under the various acts recited therein. (See p. 55 and *post*.)

"To be drunk on the premises."

The present act deals only with the sale of liquors to be drunk on the premises, and the Excise Act (6 Geo. 4, c. 81, ss. 13 and 14), makes a magistrates' licence to keep an inn a condition precedent to such form of sale only. Beer and wine not to be drunk on the premises have their own special magistrates' and excise licences (p. 55 and *post*). The sale of spirits not to be drunk on the premises, except by wholesale spirit dealers (as to which see Act of 1872, ss. 68, 69, 73), is restricted to the holders of a magistrates' licence by 16 Geo. 2, c. 10, s. 8, which section as containing a "restriction" seems to have escaped repeal by the Statute Law Revision Acts. Before the Act of 1872 there was nothing to prevent a licence to sell sweets (or home-made wines) not to be drunk on the premises from being obtained from the excise authorities alone, as 6 Geo. 4, c. 81, s. 2, contains a licence for the retail of sweets, without any condition precedent. (But see now sect. 74 of that act, tit. "Licence.")

Boroughs.

By 24 & 25 Vict. c. 75, s. 4, it is declared that the words "town corporate," "city and place," and "division or place," when used in this act, include every borough in England having a separate commission of the peace, although it may not have a separate Court of Quarter Sessions, and the words "high constable" include any constable to whom the justices of the same may direct their precept. Before that act it had been held in *Candlish* v. *Simpson* (30 L. J., M. C. 178) that the existence of a separate Court of Quarter Sessions was necessary to give borough justices jurisdiction.

Discretion of justices.

Under the old licensing acts it has been held that no mandamus could issue to compel justices to grant a licence (*R.* v. *Giles*, 2 Strange, 881), or even to rehear an application which they had once heard and refused from a mistaken view of their jurisdiction. (*R.* v. *Farringdon Without*, 2 D. & R., Mag. Ca. 365 ; see also *R.* v. *Surrey*, *ib.* p. 435.) In previous acts the word "discretion" did not occur ; it was only said that "none should keep an ale-house without licence." It is now quite plain from the words of this section that no mandamus can issue to

compel justices to grant a licence, as it has been laid down as a general rule that where justices have by statute a discretionary power to decide whether they will do a thing or not, the court will refuse to order them to do it. (*Per* Cockburn, C. J., in *R.* v. *Boteler*, 33 L. J., M. C. 103.) But the discretionary power must be judicially exercised, although the reasons for exercising it in a particular manner may be good, bad or indifferent. (*Ib.*) Accordingly, where justices had come to a resolution not to hear any applications for new licences, and in pursuance of that resolution declined to hear an applicant's solicitor in support of his case, a mandamus was granted to compel the justices to hold an adjourned meeting, and at such adjourned meeting to hear and adjudicate upon the application (*R.* v. *Walsall*, 3 C. L. R. 100; 24 L. T. 111), upon the principle that in every case where statutory powers are conferred upon a judicial body, the person against whom they may be exercised has an implied common law right to be heard. (See *Cooper* v. *Wandsworth Board of Works*, 32 L. J., P. C. 185; 14 C. B., N. S. 180; 9 Jur., N. S. 1155; 8 L. T., N. S. 278.) Where justices in pursuance of a general resolution refused to renew the licence of every person who had not taken out an excise licence to sell spirits, it was held, upon a case stated by quarter sessions, that having come to the meeting with a general resolution already prepared, they were wrong in the way in which they had exercised the discretion given them. (*R.* v. *Sylvester*, 31 L. J., M. C. 93.) In *R.* v. *Athay* (2 Burr. 653) the court is reported to have declared explicitly, that justices have no authority to annex any such conditions to the granting of a licence as that the applicant should first discharge an alleged debt. But however useful this dictum may be as a guide to the justices in the exercise of their discretion, it would seem that there is no way open to a disappointed applicant to enforce the withdrawal of such a condition by mandamus or otherwise. To do so would be to compel the justices to grant a licence, which, as we have seen, cannot be done. *R.* v. *Sylvester* is no authority to the contrary, the grounds of that decision being not that a condition was annexed, but that the discretion of the justices was not judicially exercised. Indeed, it may even be doubted whether the passing of a general resolution is to exercise the discretion in a non-judicial manner, so long as the particular applications are duly heard. In fact it was said by Erle, C. J., in *R.* v. *Walsall*, that "the general resolution to grant no more licences may have been very wise." At all events, the effect of such a resolution cannot be avoided by mandamus, however much it may be questioned in a special case. It seems to be the law, therefore, that a resolution which does not in itself preclude the hearing the application is perfectly legal, but that a resolution which does preclude the hearing and is acted upon is illegal. The rule would seem to apply equally to a resolution to grant no more licences and to a resolution to refuse none.

It has been held by the Court of Queen's Bench (*R.* v. *Lancashire*, L. R., 6 Q. B. 93; 40 L. J., M. C. 17; 23 L. T., N. S. 461; 19 W. R. 204), that in granting new licences the justices may, and ought, to consider the number of houses in the neighbourhood already licensed, and to refuse another licence if they think an additional public-house unnecessary. The point in that case was, whether evidence of the wants of the neighbourhood was admissible upon the hearing of an application for a

new certificate under the Wine and Beerhouse Act, and the court (Hannen and Lush, JJ.) held, that such evidence was admissible, and granted a mandamus to hear it.

Information against justices.

It was said by Lord Mansfield (*R.* v. *Young*, 1 Burr. 556), that justices ought to give their reasons for refusing a licence, but there is no legal process whereby they may be compelled to do so. But a criminal information will lie against justices both for granting (*R.* v. *Temple*, 1 Keb. 727; *R.* v. *Cornelius*, 2 Strange, 1210; *R.* v. *Holland*, 1 T. R. 692) and for refusing licences (*R.* v. *Williams*, 3 Burr. 1317; *R.* v. *Nottingham*, Sayer, 216; *R.* v. *Hann*, 3 Burr. 1716; *R.* v. *Young*, 1 Burr. 556) from partial, malicious or corrupt motives. (See especially the judgment of Lord Mansfield in *R.* v. *Young*.)

Action.

Since 11 & 12 Vict. c. 44, it is clear that no action will lie for refusing a licence without an express allegation of malice. Whether an action will lie even with such an allegation is said to be doubtful. (Burn's Justice, 30th ed. p. 118, citing *Gelan* v. *Hall*, 27 L. J., M. C. 78.) In *Bassett* v. *Godschall* (3 Wils. 121) it was said by Wilmot, C. J., that a man has no right to have a licence unless the justices think proper to grant it; therefore he can have no right of action against the justices for refusing it. In *Gelan* v. *Hall*, the point whether an action will lie for maliciously inflicting a penalty, and in *Linford* v. *Fitzroy* (18 L. J., M. C. 108), the point whether an action will lie for maliciously refusing bail, was raised without being decided. In both these cases, however, a right was infringed, so that they are distinguishable from the case of a refusal to grant a licence, as explained in *Bassett* v. *Godschall*.

Result of cases as to discretion.

The result of the cases relating to the discretion of the justices may be taken to be that they cannot be compelled to decide either one way or the other, but they can be compelled to inquire into applications in a judicial manner, and to admit evidence bearing upon the propriety of granting or refusing them. So long as they outwardly conform to these requirements, their motives cannot be inquired into, unless they be proved to be corrupt, in which case a criminal information may be granted.

Acts of 1872—4.

New licences for the sale of liquor to be *drunk on* premises, "in respect of which a similar licence has not theretofore been granted," require confirmation under the provisions of the Act of 1872 before they can be valid. (See ss. 37, 38, of the Act of 1872, and ss. 24, 32, of the Act of 1874.) Renewals need no confirmation. (For an alteration in the form of procedure with respect to them, see Act of 1872, s. 42, and Act of 1874, s. 26.)

Time and place of meeting;—

to be appointed by justices in petty session twenty-one days beforehand;—

II. In every such division or place as aforesaid there shall be holden, twenty-one days at the least before each such general annual licensing meeting, a petty session of the justices acting for such county or place, the majority of whom then present shall, by a precept under their hands, appoint the day, hour and place upon and in which such general annual licensing meeting for such division or place shall be holden, and shall direct such precept to the *clerk to the justices** of

* Formerly "high constable." See High Constable Act, 1869 (32 & 33 Vict. c. 47).

the division or place for which such meeting is to be holden, requiring him, within five days next ensuing that on which he shall have received such precept, to order the several petty constables or other peace officers within his constablewick to affix or cause to be affixed on the door of the church or chapel, and where there shall be no church or chapel, on some other public and conspicuous place within their respective districts, a notice of the day, hour, and place at which such meeting is appointed to be holden, and to give to or to leave at the dwelling house of each and every justice acting for such division or place, and of each and every person keeping an inn, or who shall have given notice of his intention to keep an inn, and to apply for a licence to sell exciseable liquors by retail, to be drunk or consumed on the premises, within their respective districts, a copy of such notice.

and to be made known by notices affixed on church doors, &c.

By s. 3 of the High Constables Act, 1869, it is now "the duty of the clerk to the justices of the peace in each petty sessional division, other than those which are either wholly or partly within the metropolitan police district or the city of London, to send by post to the proper parties in such division all notices of the holding of special or other session, and of any other matter or thing" of which notices were formerly "by law or custom served upon or sent to any parochial officer or other person by high constables," and no precept or notice to perform any such duty in any such division is to be any longer issued to any high constable.

High constable superseded by clerk to justices.

The proper construction of the two enactments when read together would seem to be that the clerk to the justices is bound to issue the notices without any formal precept from the justices whose clerk he is. A precept, however, may be convenient as a record of dates, &c. Whether issued or not it does not affect the clerk's fee. (See sect. 15 and note, p. 45. For form of precept and notices, see Appendix.)

III. It shall be lawful for the justices acting at the general annual licensing meeting, and they are hereby required, to continue such meeting by adjournment to such day or days, and to such place or places within the division or place for which such meeting shall be holden, as such justices may deem most convenient and sufficient for enabling persons keeping inns within such division or place to apply for such licence: provided nevertheless, that the adjourned meeting to be holden next after such general annual licensing meeting shall not be so holden in or upon any of the five days next ensuing that on which such general annual licensing meeting shall have been holden as aforesaid; and that every adjournment of the said general annual licensing meeting shall be holden within the month of

Adjournment of meeting.

Time limited for holding it.

March in the counties of Middlesex and Surrey, and of August or September in every other county.

It would seem that the first proviso of this section is imperative, and that the second is directory. (But see sect. 13, p. 39.) In *R.* v. *Walsall* (3 C. L. R. 100), a mandamus issued commanding justices to hold an adjourned meeting within a reasonable time after the 23rd November. (For the circumstances of that case, see note to section 1. For the rule that enactments relating to time and mode of procedure are to be construed as imperative only where prohibitory words are used, see Paley on Convictions, 5th edit., p. 35, citing *R.* v. *Mayor of Rochester*, 7 E. & B. 910.)

The fact of an application having been made by A. at a general meeting and refused, is no bar to an application at the adjourned meeting made by B. in respect of the same house. (*R.* v. *West Riding* (*Drake's case*), L. R., 5 Q. B. 33; 39 L. J., M. C. 17; 21 L. T., N. S. 490; 18 W. R. 259.)

If an application be once entertained and refused at the general annual meeting, it cannot be again renewed, as of right, at an adjourned meeting. (*Ex parte Rushworth*, 23 L. T., N. S. 120.) But if a case of hardship or surprise should be made out, it would be competent and reasonable for the justices to rehear the application at an adjournment. (See *per* Cockburn, C. J., *ib.*)

Special sessions. Transfers.

IV. The justices assembled at the general or quarter session which shall be holden at Michaelmas next after the passing of this act, and at the general annual licensing meeting in every subsequent year, shall appoint not less than four nor more than eight special sessions, to be holden in the division or place for which each such meeting shall be holden in the year next ensuing such general annual licensing meeting, at periods as near as may be equally distant, at which special session it shall be lawful for the justices then and there assembled, in the cases and in the manner and for the time hereinafter directed, to license such persons intending to keep inns theretofore kept by other persons being about to remove from such inns as they the said justices shall in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper persons, under the provisions hereinafter enacted, to be licensed to sell exciseable liquors by retail, to be drunk or consumed on the premises.

Discretion of justices.

For the "cases, manner and time hereinafter directed," see s. 14, p. 40. By s. 31 of the Act of 1874 (p. 126), the beer dealer's retail beer licence may be granted at special sessions, as well as at the general annual meeting; and by s. 15 of the same act (p. 144) the owner of a house may apply for a transfer in certain cases of forfeiture of the licence.

V. Whenever the justices shall have ordered any such adjournment of the general annual licensing meeting, or shall have appointed such special sessions as aforesaid, the day, hour and place for holding every such adjourned meeting and every such special session shall be appointed by precept of the majority of the said justices directed to the *clerk to the justices*,* requiring notices, similar in form to those given at the general annual licensing meeting, to be affixed on the door of the church or chapel, or on some other public and conspicuous place, and to be served upon the same parties.

Notice to be given both of adjournments and of special sessions.

By s. 26 of the Act of 1874 (p. 130), it is not necessary to serve copies of notices of an adjourned meeting on holders of or applicants for licences who are not required to attend. (For forms of notice of adjournments, see Appendix.)

VI. *Disqualification of justices who are brewers, &c. Repealed, Licensing Act*, 1872. *See now s.* 60 *of that act and note, post.*

VII. Whenever at any of the meetings to be holden as aforesaid for any liberty, county of a city, county of a town, city, or town corporate, there shall not be present at least two justices acting in and for any such liberty, county of a city, county of a town, city, or town corporate, who are not disqualified, it shall be lawful for the justices acting in and for the county or counties adjoining to such liberty, county of a city, county of a town, city, or town corporate, and not disqualified from acting, to act within such liberty or place, and with the justice or justices thereof not as hereinbefore disqualified who shall be present at any such meeting as aforesaid, for the purpose of granting or transferring licences under or of hearing complaints as to offences against this act, any law, custom, or usage to the contrary notwithstanding.

When in boroughs two justices do not attend, county justices may act.

No quorum of justices is expressly rendered necessary by this act, but it would seem that if one justice only were present at a licensing meeting, he would have no jurisdiction to grant licences. The constant use of the plural word "justices" in the act, the form and the reference to the decision of the majority (s. 9), and also the fact that two justices are mentioned in the old statutes, seem to point to this conclusion. The present section is intended to provide for the case of less than two justices attending the borough meeting. In that case the county justices may supplement the borough meeting, but it would seem that the section will not take effect if no borough justices attend the meeting, or if the county justices act alone. The concurrent jurisdictions

Concurrent jurisdiction.

* Formerly "high constable." See s. 2, and note, p. 35.

which county justices originally had in those boroughs whose charters contained no *ne intromittant* clause (*R.* v. *Sainsbury*, 4 T. R. 451; *Brown* v. *Nicholson*, 28 L. J., M. C. 49; *Candlish* v. *Simpson*, 30 L. J., M. C. 178; 4 L. T., N. S. 437; 9 W. R. 745) is now abolished by the Licensing Act, 1872 (s. 38, p. 124); but that section would seem not to affect this enactment, which does not confer a jurisdiction but a supplementary power. Nor are the words used in the Act of 1872 sufficient in themselves to work an implied repeal.

For the confirmation of licences, in boroughs having less than ten acting justices, by a joint committee of borough and county justices, see Act of 1872, s. 38, p. 122, and Act of 1874, s. 21, p. 124.

Cinque ports.

County justices to have no jurisdiction.

VIII. Nothing herein contained shall extend to give the justices of the county or any division thereof any power or authority for the putting of the provisions of this act in execution within any of the cinque ports or either of the two ancient towns, or any of the corporate or other members or liberties of the cinque ports or two ancient towns, but that it shall be lawful for the justices of and for each of the principal cinque ports and two ancient towns, and not as hereinbefore disqualified from acting, and none other, to act within and for the same and the liberties thereof not corporate respectively as they have been accustomed, and for them or any of them (not so as last aforesaid disqualified) to act within each of the corporate members immediately belonging or subordinate to such principal cinque port or ancient town, with the justice or justices of each such corporate member (not so as last aforesaid disqualified), for the purpose of granting or transferring licences under or of hearing complaints as to offences against this act, in all such cases in which the justices of the county are hereinbefore empowered or authorized to act with the justice or justices of any liberty, county of a city, county of a town, city, or town corporate.

Determination of questions by majority of justices.

IX. When (at any of the meetings aforesaid) any question touching the granting, withholding, or transferring any licence, or the fitness of the person applying for such licence, or of the house intended to be kept by such person, shall arise, such question shall be determined by the majority of justices not disqualified, who shall be present when such question shall arise; and every licence granted under the authority of this act shall be signed by the majority of the justices not disqualified who shall be present when such licence shall be granted.

The fact that one of the signing justices opposed the grant of

the licence at the hearing is no evidence of fraud that the signature was fraudulently obtained by the licence holder, and a licence appearing to be signed by the majority of justices must be held good, unless fraud be proved. (*R.* v. *Minshull*, 1 Nev. & Man. 277.) No licence can be either granted, renewed or transferred, if, upon any question arising, an actual majority cannot be obtained in favour of the applicant; for an equal division of the court amounts legally to a judgment that nothing be done in the case before it. (See *R.* v. *Belton*, 17 L. J., M. C. 70; *R.* v. *Leicestershire*, 1 M. & S. 444.)

By section 40 of the Act of 1872, the signature of the justices is no longer necessary, and the concurrence of the majority may be signified by an official seal, verified by the signature of the justices' clerk.

X. *Form of notice of application for new licence. Notice to be fixed on church door, and a copy to be served on overseers, &c. Repealed, Licensing Act,* 1872. *See now s.* 40, *subs.* 1 *of that act, p* 127.

XI. *Form of notice to be given by persons desirous to transfer their licences, stating name, &c. of proposed transferee. Repealed, Licensing Act,* 1872. *See now s.* 40, *subs.* 2 *of that act, p.* 127.

Applicant for licence, if hindered by sickness, &c. from attending in person, may appear at meeting by deputy.

XII. If any person intending to apply at the general annual licensing meeting, or at any adjournment thereof, or at any special session, for any licence to be granted under the authority of this act, or for the transfer of any such licence, shall be hindered by sickness or infirmity, or by any other reasonable cause, from attending in person at any such meeting, it shall be lawful for the justices there assembled to grant or transfer such licence to such person so hindered from attending, and to deliver the same to any person then present who shall be duly authorized by the person so hindered from attending to receive the same, proof being adduced to the satisfaction of such justices, who are hereby empowered to examine upon oath into the matter of such allegation, that such person is hindered from attending by good and sufficient cause.

This section is applied by 33 & 34 Vict. c. 29, s. 3, subs. 5, to licences granted under the Wine and Beerhouse Act, 1869. The section does not apply to cases of confirmation under the Act of 1872, but a similar provision would seem to be a reasonable one to include among the rules for regulating the procedure of the confirming authority. In the case of renewals, personal attendance is in general dispensed with by s. 42 of the Act of 1872 (p. 130).

Licence to be in force for one year only.

XIII. Every licence which shall be granted under the authority of this act shall be in force in the counties of Middlesex and Surrey from the fifth day of April, and elsewhere from the tenth day of October,

after the granting thereof, for one whole year thence respectively next ensuing, and no longer; and every licence for the purposes aforesaid, which shall be granted at any other time or place than that hereby directed, except as hereinafter excepted, shall not entitle any person to obtain an excise licence for selling exciseable liquors by retail to be drunk or consumed on the premises of the person licensed, and shall be utterly void to all intents and purposes.

Form.

As this section originally stood, it prescribed a statutory form of licence, but so much of the section as relates to the form of licence is repealed by the Licensing Act, 1872, which by s. 48 (p. 134) prescribes that every licence shall be in such form as may from time to time be prescribed by a secretary of state. For the present official forms of licence, see Appendix.

Transfers—

XIV. If any person duly licensed under this act shall (before the expiration of such licence) die, or shall be by sickness or other infirmity rendered incapable of keeping an inn, or shall become bankrupt, or shall take the benefit of any act for the relief of insolvent debtors; or if any person so licensed, or the heirs, executors, administrators or assigns of any person so licensed, shall remove from or yield up the possession of the house specified in such licence; or if the occupier of any such house, being about to quit the same, shall have wilfully omitted or shall have neglected to apply at the general annual licensing meeting, or at any adjournment thereof, for a licence to continue to sell exciseable liquors by retail, to be drunk or consumed in such house; or if any house, being kept as an inn by any person duly licensed as aforesaid, shall be or be about to be pulled down or occupied under the provisions of any act for the improvement of the highways or for any other public purpose, or shall be, by fire, tempest or other unforeseen and unavoidable calamity, rendered unfit for the reception of travellers, and for the other legal purposes of an inn; it shall be lawful for the justices assembled as aforesaid at a special session holden under the authority of this act for the division or place in which the house so kept or having been kept shall be situate in any one of the above-mentioned cases, and in such cases only, to grant to the heirs, executors or administrators of the person so dying, or to the assigns of such person becoming incapable of keeping an inn, or to the assignee or assignees of such bankrupt or insolvent, or to any new tenant or occupier of any house having so become unoccupied, or to any

may be made in specified cases only.

person to whom such heirs, executors, administrators or assigns shall by sale or otherwise have bonâ fide conveyed or otherwise made over his or their interest in the occupation and keeping of such house, a licence to sell exciseable liquors by retail, to be drunk or consumed in such house or the premises thereunto belonging; or to grant to the person whose house shall as aforesaid have been or shall be about to be pulled down or occupied for the improvement of the highways or for any other public purpose, or have become unfit for the reception of travellers, or for the other legal purposes of an inn, and who shall open and keep as an inn some other fit and convenient house, a licence to sell exciseable liquors by retail, to be drunk or consumed therein: provided always, that every such licence shall continue in force only from the day on which it shall be granted until the fifth day of April or the tenth day of October then next ensuing, as the case may be: provided also, that every person intending to apply, in any of the above-mentioned cases, at any such special session, for a licence to sell exciseable liquors by retail to be drunk or consumed in a house or premises thereunto belonging in which exciseable liquors shall not have been sold by retail, to be drunk or consumed on the premises, by virtue of a licence granted at the general annual licensing meeting next before such special session, shall on some one Sunday within the six weeks next before such special session, at some time between the hours of ten in the forenoon and of four in the afternoon, affix or cause to be affixed on the door of such house, and on the door of the church or chapel of the parish or place in which such house shall be situate, and where there shall be no church or chapel on some other public and conspicuous place within such parish or place, such and the like notice as is hereinbefore directed to be affixed by every person intending to apply at the general annual licensing meeting for a licence to sell exciseable liquors by retail, to be drunk or consumed in a house not theretofore kept as an inn, and shall in like manner serve copies of the said notice on one of the overseers of the poor and on one of the constables or other peace officers of such parish or place.

Duration of transfer.

Notices, &c.

It will be seen that although the change of tenancy by act *inter vivos* is mentioned in the protasis of this involved section under the words "shall remove from," there is no mention in the apodosis of the person to whom the transfer is to be made. The deficiency, if any, is supplied by the words "such persons

intending to keep inns" in section 4, to which reference must be had for authority to hold the special sessions.

By s. 15 of the Act of 1874 (p. 144), the owner of a house may apply for a transfer, in cases of forfeiture of the licence by the conviction of the holder for certain specified offences.

Discretion of justices.

In all cases of transfer, the discretion of the justices is absolute. (*R.* v. *Rowell*, L. R., 7 Q. B. 490; 26 L. T., N. S. 732.) If the new tenant has not time between his coming in and the next general annual meeting to have the requisite notice given, he may apply at special sessions, and is not bound to apply at an adjournment of the general meeting. (*R.* v. *Middlesex*, L. R., 6 Q. B. 781; 40 L. J., M. C. 184; 25 L. T., N. S. 41.) It is necessary that the licence proposed to be transferred should be in existence at the time of the removal. (*Simpkin* v. *Birmingham*, L. R., 7 Q. B. 482; 41 L. J., M. C. 102.) If an application for renewal has been made and refused, a new tenant cannot obtain a transfer as upon an omission by the old tenant to apply for renewal. (*R.* v. *Taylor*, L. R., 7 Q. B. 487.) It will be observed that in *R.* v. *Middlesex* it was assumed that it is not necessary the licence should be in existence at the time of the application, so long as it existed at the time of removal. The point has not been expressly raised, and it is doubtful whether it would be so decided.

It has been held that where upon a contract to sell a public-house, the seller agrees to get the licence transferred, and it turns out that the licence is in the name of a person out of the country, and unable to give the notices, the buyer is discharged from the contract, and may recover the deposit money. (*Claydon* v. *Green*, L. R., 5 C. P. 511. See also *Day* v. *Luhke*, L. R., 5 Eq. 336; *Modlen* v. *Snowball*, 31 L. J., M. C. 44; and *Bryant* v. *Beattie*, 4 B. N. C. 254; 5 Scott, 751.) It has been held illegal for a tenant to sell under a licence granted to a landlord, if the landlord's name be still set up over the door, and that an action for rent cannot be maintained in such a case. (*Ritchie* v. *Smith*, 6 C. B. 462; 18 L. J., C. P. 9.)

For application of this section to wine and beer licences, see 33 & 34 Vict. c. 29, s. 4 (p. 73). For notices preliminary to transfer, see Act of 1872, s. 40, subs. 2 (p. 127), from which it will appear that it is necessary for the transferor to give the notice of application.

Temporary transfers may be made at any petty session.

[5 & 6 Vict. c. 44. From and after the passing of this act, at any petty session of justices of the peace holden in and for any division of every county and riding, and in any hundred of every county not being within such division, and in every liberty, city, town or place within which any inn, alehouse or victualling house shall be situated, and for which the said justices shall be acting, at any time when no special session shall be holden for any such division, hundred, liberty, city, town or place, it shall be lawful, in those cases where justices of the peace assembled at a special session are empowered, by an act passed in the ninth year of the reign of King George the Fourth, intituled "An Act to regulate the granting of Licences to Keepers of Inns, Alehouses and Victualling Houses

in England," to transfer or grant licences, before the expiration thereof, to sell exciseable liquors by retail in the same house or premises in respect of which any person had been theretofore duly licensed, for the majority of the justices then present, upon application made to them at any such petty session, by indorsement under their hands and seals on any licence which shall have been granted pursuant to the provisions of the said act at any general licensing meeting, or at any adjournment thereof, to authorize (if they shall deem it proper so to do, after examining upon oath all necessary parties), any person not disqualified by the said act, to whom it shall be proposed at the time of such application to transfer or grant any such licence, to use, exercise and carry on the business of a licensed victualler at the same house and on the same premises, and there to sell such exciseable liquors as might theretofore have been lawfully sold and retailed therein; and thereupon it shall be lawful for the officer of excise empowered to transfer licences by indorsement on the excise licences required to be transferred to give the like authority to the persons so authorized by the magistrate or justices; and the authority so granted shall continue and be in force until the then next ensuing special session which shall be holden for the division, hundred, liberty, city, town or place within which such house and premises shall be situated, and no longer; at which special session the justices then and there assembled, upon application made to them pursuant to the said act, touching any transfer or grant of licence to the party or parties to whom such authority shall have been so given at petty sessions as aforesaid, shall hear and dispose of such application according to the provisions of the said act: provided always, that nothing herein contained shall be construed to empower any justices at petty sessions to give any such authority as aforesaid within any of the divisions assigned or to be assigned to any of the police courts already established or to be established within the metropolitan police district, except in the borough of Southwark; but that any such application as is hereinbefore directed to be made at petty sessions shall, when the house and premises in respect whereof any licence shall have been obtained under the said act shall be situated within any of the said police court divisions, and not in the borough of Southwark, be made to one of the police magistrates sitting at any of the said courts, and such magistrate shall in his dis-

Discretion of justices.

Transfer by excise.

The temporary transfer to be in force until the next special session only.

Saving for metropolitan police district, where the transfers may be made by police magistrate only.

cretion grant such authority in the manner and for the time hereinafter mentioned: provided also, that any person or persons who shall be authorized, under the provisions of this act, to continue to carry on the business of a licensed victualler, shall, after the obtaining such authority, and so long as the same shall continue in force, be subject to all the powers, regulations, proceedings, penalties and provisions declared by or contained in any act or acts in force touching the regulation, government or control of licensed keepers of inns, alehouses, and victualling houses, in like manner as if the same had been repealed and re-enacted, and that all penalties and forfeitures imposed by any such act or acts shall be applied as directed by the same respectively.

Saving for penalties, &c. of general licensing acts.

It may be well to observe that not only have the justices in petty sessions an absolute discretion to grant or refuse a temporary transfer, but the justices in special sessions have a similar absolute discretion, and are not in any way bound by the temporary transfer authorized at petty sessions. (For the application of the act to houses licensed under the Act of 1869, see 33 & 34 Vict. c. 29, s. 4, subs. 5, p. 74.)

A temporary transfer may be granted to the owner of a house, in certain cases of the forfeiture of the licence by the holder. (See Act of 1874, s. 15, p. 144.)

Lost licence may be supplied by certified copy.

Sect. 2. Whenever it shall be proved to the satisfaction of any such magistrate or justices at petty session, upon any application made as aforesaid, that any licence granted pursuant to the said act passed in the ninth year of the reign of King George the Fourth has been lost or mislaid, it shall and may be lawful for the said magistrates or justices to receive a copy of such licence, certified to be a true copy under the hand of the clerk to the licensing justices by whom the said licence shall have been granted, and to make such indorsement thereon as he or they might make under the provisions of this act upon the original licence; and such indorsement upon the copy so certified shall be as valid and effectual as if the same had been made upon the said licence.

The certified copy would seem to be, not a copy taken from the licence before it was lost, but a duplicate issued by the clerk. By s. 41 of the Act of 1872 (p. 128), the power of the justices to receive the copy is extended to the case where the original is withheld by the holder.

Fee for copy.

Sect. 3. For every such certified copy and every such indorsement a fee of two shillings and sixpence, and no more, shall and may be demanded and taken.

Disqualified justices.

Sect. 4. No justice of the peace shall act upon any application which shall be so made at petty sessions as aforesaid who now is or shall be disqualified by law from acting in or being present at any general annual licensing meeting, or any adjournment thereof, or at any special session for granting or transferring licences to sell exciseable liquors; and every justice who, being so disqualified, shall wilfully offend against this provision, shall be liable to the same penalty and proceedings for the recovery thereof as are specified and directed by the said act of the ninth year of the reign of King George the Fourth.]

For disqualifications of justices as brewers, &c., see Act of 1872, s. 60 (*post*).

Act of 1823, *continued.*

Fees for licences.

XV. It shall be lawful for the clerk of the justices as well at the general annual licensing meeting as also at any special session to be holden under this act, to demand and receive from every person to whom a licence shall be granted under this act, for the trouble of such clerk, and for all expenses connected therewith, the sums following, and no more: videlicet, for the petty constable or other peace officer, for serving notices, and for all other services hereby required of such petty constable or other peace officer, the sum of one shilling; for the clerk of the justices, for the licence, the sum of five shillings; and for preparing the precepts to be directed to the *clerk to the justices**, and notices to be delivered by the petty constable, as required by this act, the sum of one shilling and sixpence; and every such clerk who shall demand or receive from any person for such respective fees in this behalf any greater sum or anything of greater value than the sums hereinbefore specified, being in the whole the sum of seven shillings and sixpence, shall for every such offence, on conviction before one justice, forfeit and pay the sum of five pounds.

Penalty for exacting more than legal fees.

The scale of fees supplied by this section applies (with the addition of one shilling allowed upon registration by s. 36 of the Act of 1872 (p. 120)) to the public-house licence under this act, and to the "new licence" under the Wine and Beerhouse Act. There was no express mention in the Act of 1869 of the justices' clerk's fees, but they would seem to be included in the general words of s. 8 (p. 71), which apply all the provisions as to "the terms on which" licences are to be granted. In the amending Act of 1870, 33 & 34 Vict. c. 29, s. 4, subs. 3 (p. 73), there is an express provision for fees upon renewal of licences under

* Formerly "high constable." See s. 2, and note, p. 35.

the Act of 1869. Those fees are, four shillings for the clerk, and one shilling for the service of notices. The Act of 1872, which creates several new justices' licences, makes no express provision as to fees, but licences for sweets are authorized to be granted as if sweets were wine by s. 74 (p. 153), and the spirit-dealer's retail licence is, by s. 69 (p. 149), to be granted in the same manner as a wine licence ; so that the provisions relating to licences under the Act of 1869 will apply. According to the authorized forms of licence issued under s. 48 (p. 149), a separate form of justices' licence, under the Act of 1869, is prescribed for each corresponding excise licence, so that if one person took out more than one such licence, the clerk to the justices would be entitled to his fees upon each licence. The Licensing Act, 1874, however, by s. 23 (p. 126), provides that separate justices' licences shall not be required in such a case, but that one justices' licence is to be sufficient, so that the fee becomes payable as for one licence only. It may be doubted whether the preparation of a precept, for which a fee is allowed in the case of the public house and the new licence, under the Act of 1869, is still necessary, but as the fee in question is appropriated to the notices as well as the precept, the right to the fee is unaffected in any case. The general result is, that on the grant or renewal of a public-house licence, or on the grant of any other new licence, the clerk to the justices is entitled to eight shillings and sixpence, one shilling of which is to go for the fixing of the notice; and that on the renewal of all licences, except public-house licences, he is entitled to six shillings, one shilling of which is to go for the notice.

For observations upon the general title of justices' clerks to fees, see *R.* v. *Haslingfield Overseers*, 43 L. J., Q. B. 38; 29 L. T., N. S. 801.

A custom in a borough for the mayor to receive a fee on a licence cannot be presumed, because licences have been made necessary within legal memory, and such a fee, if paid, may be recovered as money had and received. (*Morgan* v. *Palmer*, 2 B. & C. 729.)

Sheriff's officer, &c. disqualified.

XVI. No sheriff's officer, or officer executing the legal process of any court of justice in any county or place, shall be capable of receiving or using any licence under this act; and every licence granted or transferred to any person exercising any such office shall be void to all intents and purposes.

A conviction of felony disqualifies for the sale of spirits, wine, beer and cider ; and a conviction of selling spirits without licence, or of forging a licence under the Act of 1869, disqualifies for sale of wine, beer and cider. (3 & 4 Vict. c. 61, s. 7 ; 23 Vict. c. 27, s. 22 ; 33 & 34 Vict. c. 29, s. 14 ; Act of 1869, s. 11.) Under the Act of 1872, a conviction of keeping a house as a brothel disqualifies for ever (s. 15). A second conviction of sale without licence may disqualify for a term of years (s. 3); and upon a third recordable conviction after two convictions have been recorded on the licence, there is an *ipso facto* disqualification for five years (s. 30). For list of recordable offences, see pp. 11, 12.

Excise licence not to be granted

XVII. No licence for the sale of any exciseable liquors by retail, to be drunk or consumed on the pre-

mises of the person licensed, shall be granted by the commissioners of excise, or by any officer of excise, to any person whatsoever, unless such person shall have previously obtained from the justices a licence under this act, and which said licence of such justices shall be retained by such person, after being produced to the commissioners or officers of excise; and every licence granted by the commissioners of excise, or by any officer of excise, contrary to this provision, shall be null and void to all intents and purposes. except to holder of justices' licence.

By s. 37 (p. 54), exciseable liquors includes "any ale, beer or other fermented malt liquor, sweets, cider, perry, wine or other spirituous liquor which now is or hereafter may be charged with duty either by customs or excise." Notwithstanding the words "now is," it has been held that liquors which have ceased since the passing of the act to pay excise duty are not "exciseable liquors" within the meaning of the act. (*R.* v. *Lancashire*, 7 E. & B. 839; 26 L. J., M. C. 171, with respect to sweets; *Jones* v. *Whittaker*, L. R., 5 Q. B. 541; 39 L. J., M. C. 139; 18 W. R. 1197, with respect to beer.) As beer and sweets are according to the above cases no longer exciseable liquors, this section has no effect as regards beer and sweets. By 6 Geo. 4, c. 81, s. 13, however, no excise licence for the sale of beer to be drunk on the premises may be granted except on production of a magistrates' licence to keep an inn, ale-house, or victualling-house. By s. 14 of the same act, a licence for sweets to be drunk on the premises was grantable only to the holder of the beer licence, but by s. 74 of the Act of 1872, a licence for the sale of sweets is authorized to be granted in the same manner as if sweets were wine, *i. e.*, under the Wine and Beerhouse Act, 1869.

XVIII. *Penalty on sale of "exciseable liquors," without licence. Repealed, Licensing Act*, 1872. *See now s. 3 of that act*, p. 80.

XIX. *Penalty on refusal to use standard measures if required. Repealed, Licensing Act*, 1872. *See now s. 8 of that act*, p. 86.

XX. *Closing in case of riot. Repealed, Licensing Act*, 1872. *See now s. 23 of that act*, p. 97.

XXI. *Penalties for offences against the tenor of the licence: trial of third offence by jury. Repealed, Licensing Act*, 1872.

XXII. *Prosecution by petty constable. Repealed, Licensing Act*, 1872.

XXIII. *Penalty on witnesses for non-attendance. Repealed, Licensing Act*, 1872.

XXIV. Every penalty and forfeiture imposed by this act upon any justice may be sued for and recovered by action of debt in any of his Majesty's courts of record at Westminster, and one moiety of every such penalty or forfeiture shall be paid to the use of his Penalty on justice.

Majesty, his heirs and successors, and the other moiety to him who shall sue for the same.

The only penalty imposed by the act on justices is that imposed by sect. 6, on justices acting in spite of being disqualified as brewers, &c. Sect. 6 being repealed by the Act of 1872, this section, which applies only to penalties under this act, is virtually repealed along with sect. 6.

XXV. *Recovery of penalties on licence holders. Repealed, Licensing Act*, 1872.

XXVI. *Application of the above penalties. Repealed, Licensing Act*, 1872.

Appeal to quarter sessions against refusal to renew or transfer a licence.

XXVII. Any person who shall think himself aggrieved by any act of any justice done in or concerning the execution of this act, may appeal against such act to the next general or quarter sessions of the peace holden for the county or place wherein the cause of such complaint shall have arisen, unless such sessions shall be holden within twelve days next after such act shall have been done, and in that case to the next subsequent session holden as aforesaid, and not afterwards, provided that such person shall give to such justice notice in writing of his intention to appeal, and of the cause and matter thereof, within five days next after such act shall have been done, and seven days at the least before such session, and shall within such five days enter into a recognizance, with two sufficient sureties, before a justice acting in and for such county or place as aforesaid, conditioned to appear at the said session, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person, if in custody for any offence in reference to which the act intended to be appealed against shall have been done; and the court at such session shall hear and determine the matter of such appeal, and shall make such order therein, with or without costs, as to the said court shall seem meet; and in case the act appealed against shall be the refusal to grant or to transfer any licence, and the judgment under which such act was done be reversed, it shall be lawful for the said court to grant or to transfer such licence in the same manner as if such licence had been granted at the general annual licensing meeting or had been transferred at a special session; and the judgment of the said court shall be final and conclusive

Notice of appeal, recognizance, &c.

to all intents and purposes; and in case of the dismissal of such appeal or of the affirmance of the judgment on which such act was done, and which was appealed against, the said court shall adjudge and order the said judgment to be carried into execution, and costs awarded to be paid, and shall if necessary, issue process for enforcing such order: provided, that no justice shall act in the hearing or determination of any appeal to the general or quarter sessions as aforesaid from any act done by him in or concerning the execution of this act: provided also, that when any cause of complaint shall have arisen within any liberty, county of a city, county of a town, city, or town corporate, it shall be lawful for the person who shall think himself so as aforesaid aggrieved to appeal against any such act as aforesaid, if he shall think fit, to the quarter sessions of the county within or adjoining to which such liberty or place shall be situate, subject to all the provisions hereinbefore contained.

Exclusion from the hearing of justices appealed against.

Boroughs.

"Except in so far as they relate to the renewal or transfer of licences under ss. 4 and 14," this and the two following sections are repealed in the schedule of the Act of 1872, with respect to public-house licences, and by s. 27 of the Act of 1874, with respect to licences under the Wine and Beerhouse Act, 1869.

When all the requirements of this section have been complied with, the court of quarter sessions has no power to refuse the entry of an appeal on the ground of non-compliance with a rule of sessions requiring that appeals must be entered three clear days before the first day of sessions (*R.* v. *Pawlett*, 29 L. T., N. S. 390). If the appeal be struck out on the ground of such non-compliance, an order on the appellant for costs will be quashed on certiorari (*Ib.*).

"Aggrieved party."

The words "person who shall think himself aggrieved" mean a person who is immediately aggrieved by the act done, as by the refusal of a licence to himself, by fine, &c., and not one who is only consequentially aggrieved, as the owner of a public-house of long standing by the granting of a licence to a new one likely to injure his business; for such a person has a mere licence for a year, and has no vested right to sell exciseable liquors beyond that time (*R.* v. *Middlesex*, 3 B. & Ad. 938).

By the Municipal Corporations Act (4 & 5 Will. 4, c. 76, s. 111) it is enacted, that no part of any borough having a separate court of quarter sessions shall be within the jurisdiction of the justices of any county. Notwithstanding that section, it has been held that an appeal against borough justices must be made to the quarter sessions of the county, and that although the borough may have a ne intromittant clause (*R.* v. *Deane*, 2 Q. B. 96; 1 G. & D. 302). By s. 105, of the Municipal Corporations Act, the recorder is made sole judge of borough quarter sessions, with the proviso that "no recorder, by virtue of his office, shall have power to grant any licence or authority to any person to keep an inn, ale-house, or victualling-house, to sell ex-

ciseable liquors by retail." Held, that the recorder has no jurisdiction to hear an appeal against refusal by borough justices to grant a licence (*R.* v. *Cockburn, Recorder of Bristol*, 24 L. J., M. C. 43; 4 E. & B. 265).

Originally this section applied to appeals against convictions, as well as against refusals to renew and transfer, and the last proviso gave a person convicted by municipal justices the option of appealing either to the borough or county quarter sessions. So far, however, as convictions are concerned, the section is repealed, and the proviso does not reappear in s. 52 of the Act of 1872, which now provides for appeals upon convictions. As we have seen, the recorder in boroughs has no jurisdiction to hear appeals against refusals to renew and transfer, so that the proviso becomes inoperative. The general result is, that appeals against refusals to renew and transfer in boroughs are heard before the quarter sessions for the county, while appeals against convictions are heard before the recorder.

No adjournment of appeal.

Notwithstanding the power of adjournment generally vested in a court having power to hear and determine, the quarter sessions have no power under this particular act to adjourn the appeal, and the case must be determined at the sessions to which the appeal is made, the question being one which requires speedy decision (*R.* v. *Belton*, 17 L. J., M. C. 70; 11 Q. B. 379).

Notice to justices.

Notice must be given to all the justices whose decision is appealed against (*R.* v. *Cheshire*, 11 A. & E. 139). The jurisdiction given by this section to order costs is not taken away by 12 & 13 Vict. c. 45, s. 18, which is to be construed as giving a cumulative remedy (*R.* v. *Ely*, 5 E. & B. 489). The recognizances, therefore, of the appellant may be estreated (*Ib.*).

By the joint operation of 12 & 13 Vict. c. 45, s. 5, and 11 & 12 Vict. c. 43, s. 27, costs given by quarter sessions on appeal are recoverable by distress, and imprisonment in default of distress (*R.* v. *Pratt*, L. R., 5 Q. B. 176).

It will have been noticed that the justices whose decision is appealed against are expressly precluded from acting in the hearing of any appeal. The appeal sections of the Licensing Act, 1872, do not contain such proviso. With respect to orders and convictions, therefore, there is no legal impediment to the justices whose decision is appealed against acting in the hearing of the appeal.

Witnesses may be bound over.

XXVIII. When any person shall have given notice of his intention to appeal as aforesaid, and shall have entered into recognizance as hereinbefore directed, it shall be lawful for the justice before whom such recognizance shall have been entered into to summon any person whose evidence shall appear to him material, and to require such person to be bound in recognizance to appear at the said general or quarter session, and to give evidenee in such appeal; and in case any such person as aforesaid shall neglect or refuse to obey such summons, or shall refuse to enter into such recognizance, it shall be lawful for such justice as aforesaid to issue his warrant to apprehend such person so neglecting or refusing to obey such summons, and to

bring him before such justice, and if such person shall continue to refuse to enter into such recognizance, to commit him to the common gaol or house of correction of the county or place for which such justice shall be then acting, there to remain until he shall enter into such recognizance, or shall be otherwise discharged by due course of law.

Costs of appeal

XXIX. In every case where notice of appeal against the judgment of any justice in or concerning the execution of this act shall have been given, and such appeal shall have been dismissed, or the judgment so appealed against shall have been affirmed, or such appeal shall have been abandoned, it shall be lawful for the court to whom such appeal shall have been made or intended to be made, and such court is hereby required, to adjudge and order that the party so having appealed, or given notice of his intention to appeal, shall pay to the justice to whom such notice shall have been given, or to whomsoever he shall appoint, such sum by way of costs as shall in the opinion of such court be sufficient to indemnify such justice from all cost and charge whatsoever to which such justice may have been put in consequence of his having had served upon him notice of the intention of such party to appeal; and if such party shall refuse or neglect forthwith to pay such sum, it shall be lawful for the said court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid; and that in every case in which the judgment so appealed against shall be reversed it shall be lawful for such court, if it shall think fit, to adjudge and order that the treasurer of the county or place in and for which such justice whose judgment shall have been so reversed shall have acted on the occasion when he shall have given such judgment shall pay to such justice, or to whomsoever he shall appoint, such sum as shall in the opinion of such court be sufficient to indemnify such justice from all costs and charges whatsoever to which such justice may have been so put; and the said treasurer is hereby authorized to pay the same, which shall be allowed to him in his accounts.

payable to respondent justices, if the appeal fail, by the appellant;

if the appeal succeed, by the county treasurer.

As far as regards appeals against convictions and orders, this section was repealed by 11 & 12 Vict. c. 43, which by its 27th section prescribes that the order shall direct the costs to be paid to the clerk of the peace in the first instance, and by its 36th section repeals all other acts or parts of acts which are inconsistent with it (*R.* v. *Hellier*, 21 L. J., M. C. 3; 17 Q. B. 229).

As far as regards new licences it is, as we have seen, repealed by the Acts of 1872 and 1874. The result is, that the section is in force so far as relates to renewals and transfers, but not otherwise. By "treasurer of the county or place" is meant "treasurer of the county in which the place where the judgment reversed was given is situate," and not treasurer of the borough (*R.* v. *Dale*, 22 L. J., M. C. 47). The treasurer of the place meant in the section must clearly be treasurer of a place having a court of quarter sessions, an officer under the control of the justices making the order with the fund under their control (*per* Jervis, C. J., *ib.*).

Action against justices.

XXX. Every action against any justice, constable, or other person for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office under this act, shall be commenced within three calendar months after the cause of action or complaint shall have arisen, and not afterwards; and if any person shall be sued for any matter or thing which he shall have done in the execution of this act, he may plead the general issue, and give the special matter in evidence.

For the general law governing actions against justices, see 11 & 12 Vict. c. 44. As to whether an action lies for refusing a licence, see p. 34, note.

XXXI. *Conviction to be on oath. Repealed, Licensing Act*, 1872.

All convictions must be on oath; 11 & 12 Vict. c. 43, s. 14.

XXXII. *Forms of conviction. Repealed, Licensing Act*, 1872.

See 11 & 12 Vict. c. 43, s. 17.

XXXIII. *Convictions to be filed amongst records of court of quarter sessions. Repealed, Licensing Act*, 1872. *See now s.* 36 *of that act, p.* 119.

XXXIV. *Exclusion of certiorari. Repealed, Licensing Act*, 1872. *See now s.* 54 *of that act, p.* 142.

XXXV. *This section repeals the following enactments :—*

5 & 6 *Edw.* 6, *c.* 25; 1 *Jac.* 1, *c.* 9; 4 *Jac.* 1, *c.* 4; 4 *Jac.* 1, *c.* 5; 21 *Jac.* 1, *c.* 7, *s.* 5; 1 *Car.* 1, *c.* 4; 3 *Car.* 1, *c.* 3; 9 *Geo.* 2, *c.* 23, *ss.* 14, 15, 20; 24 *Geo.* 2, *c.* 40, *s.* 24; 26 *Geo.* 2, *c.* 31; 28 *Geo.* 2, *c.* 19, *s.* 2; 29 *Geo.* 2, *c.* 12, *ss.* 23, 24; 30 *Geo.* 2, *c.* 24, *s.* 14; 5 *Geo.* 3, *c.* 46, *ss.* 20, 21, 22; 32 *Geo.* 3, *c.* 59; 38 *Geo.* 3, *c.* 54, *s.* 13; 39 *Geo.* 3, *c.* 86; 48 *Geo.* 3, *c.* 143, *ss.* 7, 10; 4 *Geo.*

4, *c.* 125, *ss.* 1—6. *Such parts of them as repeal any former acts or parts of acts are excepted from the repeal.*

With the exception of purely excise enactments, the only enactments relating to the subject-matter of the Licensing Acts of earlier date than 1828, still remaining unrepealed, are 35 Geo. 3, c. 113 (providing penalty for sale without licence, &c.); 39 Geo. 3, c. 79, s. 14 (empowering justice to declare licence forfeited on proof of unlawful or seditious meeting); 56 Geo. 3, c. 58 (adulteration), and 57 Geo. 3, c. 19, s. 29 (similar to 39 Geo. 3, c. 79, s. 14).

Savings for the universities, vintners, city of London, excise laws and fairs.

XXXVI. Provided always, and be it further enacted, that nothing in this act contained shall extend to alter or in any manner to affect any of the rights or privileges of the universities of Oxford or Cambridge, or the powers of the chancellors or vice-chancellors of the same, as by law possessed under the respective charters of the said universities or otherwise; or the master, wardens, freemen, and commonalty of the vintners of the city of London, but not to extend to those freemen of the said company of vintners who have obtained the same by redemption only; nor to alter the time of granting licences for keeping inns in the city of London: provided also, that nothing in this act contained shall alter any law relating to the revenue of excise, except so far as the same is hereby expressly altered and otherwise provided for; nor to prohibit any person from selling beer in booths or other places at the time and within the limits of the ground or place in or upon which is holden any lawful fair, in like manner as such person was authorized to do before the passing of this act.

For savings under the Act of 1872, see sect. 72, and note, p. 150. The saving for fairs appeared in 5 & 6 Edw. 6, c. 25, but is now, as well as the saving for races, taken away by s. 18 of the Licensing Act 1874 (p. 111), and an occasional licence is made necessary.

Interpretation clause.

XXXVII. (By this section the words "treasurer of the county or place" include "any officer acting in such capacity or charged with the receipt and expenditure of monies from and out of which the costs of public prosecutions have been usually defrayed;" the words "county" and "county or place" include "any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate;" the words "parish or place," include any township, hamlet, tithing, vill, extra-paro-

chial place, or any place maintaining its own poor; the word "inn" includes "any inn, ale-house or victualling house;" the words "inn, ale-house or victualling house," include "all houses in which shall be sold by retail any exciseable liquor to be drunk on the premises;" and the words "exciseable liquor" include "any ale, beer or other fermented malt liquor, sweets, cider, perry, wine or other spirituous liquor which now is or hereafter may be charged with duty either by customs or excise." The section also contains the usual direction in the acts of the period that the meaning of words shall not be restricted by the use of the singular number or masculine gender only.)

"Exciseable" liquor.

SCHEDULES.

A. Form of Application for new licence under s. 10.
B. Form of Notice as to proposed transfer under s. 11.
C. Form of Licence under s. 13.

} Repealed, Licensing Act, 1872.

III.

THE WINE AND BEERHOUSE ACT, 1869, WITH ITS RECITED ACTS AND AMENDING ACT.

32 & 33 Vict. c. 27.

An Act to amend the Law for licensing Beerhouses, and to make certain Alterations with respect to the Sale by retail of Beer, Cider, and Wine.

[12th July, 1869.]

Whereas by the acts relating to the general sale of beer and cider by retail in England ; (that is to say,)

(1.) An act of the session of the last year of the reign of King George the Fourth and the first year of the reign of King William the Fourth, chapter sixty-four, intituled "An Act to permit the general sale of beer and cider by retail in England ;" 1 Will. 4. c. 64.

(2.) An act of the session of the fourth and fifth years of the reign of King William the Fourth, chapter eighty-five, intituled "An Act to amend an Act passed in the first year of his present Majesty, to permit the general sale of beer and cider by retail in England ;" 4 & 5 Will. 4, c. 85.

(3.) An act of the session of the third and fourth years of the reign of her present Majesty, chapter sixty-one, intituled "An Act to amend the Acts relating to the general sale of beer and cider by retail in England ;" 3 & 4 Vict. c. 61.

(4.) An act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter twenty-one, entitled "An Act for granting to her Majesty certain duties of excise and stamps ;" 24 & 25 Vict. c. 21.

provision is made for the grant of licences by the

excise for the sale by retail of beer and cider upon the terms and conditions therein specified:

26 & 27 Vict. c. 33. And whereas by an act of the session of the twenty-sixth and twenty-seventh years of the reign of her present Majesty, chapter thirty-three, intituled "An Act for granting to her Majesty certain duties of inland revenue, and to amend the laws relating to the inland revenue," it is enacted, that any person who after the passing of that act has taken out an excise licence to sell strong beer in casks containing not less than four and a-half gallons, or in not less than two dozen reputed quart bottles, at one time, to be drunk or consumed elsewhere than on his premises, may take out an additional licence on payment of the excise duties therein mentioned, and that the same shall authorize such person to sell beer in any less quantity and in any other manner than as aforesaid, but not to be drunk or consumed on the premises where sold, and that such additional licence shall be granted without the production of any certificate, or the possession of any other qualification than the licence therein first mentioned:

23 Vict. c. 27. And whereas provision is made for the grant of licences by the excise for refreshment-houses and for the sale of wine by retail, and for other purposes, by an act of the session of the twenty-third year of the reign of her present Majesty, chapter twenty-seven, intituled "An Act for granting to her Majesty certain duties on wine licences and refreshment-houses, and for regulating the licensing of refreshment-houses, and the granting of wine licences:"

And whereas it is expedient to make better provision with regard to the granting of the licences hereinbefore mentioned, and for regulating the houses and shops in which beer, cider, and wine are sold by retail:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows; (that is to say,)

I. This act shall not apply to Scotland or Ireland.

II. For the purposes of this act the term "beer" shall include ale and porter, and the term "cider" shall include perry.

III. This act may be cited as "The Wine and Beerhouse Act, 1869."

Magistrates' certificates IV. From and after the fifteenth of July, one thou-

sand eight hundred and sixty-nine no licence or renewal of a licence for the sale by retail of beer, cider, or wine, or any of such articles, under the provisions of any of the said recited acts shall (save as is in this act otherwise provided) be granted except upon the production and in pursuance of the authority of a certificate granted under this act.

necessary before obtaining *the following licences:*

Any licence granted or renewed in contravention of this enactment shall be void.

The licences which require a magistrates' certificate under this section must satisfy two conditions. They must be licences "for the sale by retail of beer, cider, or wine, or any of such articles," and they must be licences "under the provisions of" one of the recited acts. It would seem that "*or* wine" ought to be read *and* wine, the three liquors been first taken collectively and then distributively. The recited acts contain, besides the licences treated in the following pages as requiring certificates, references to the refreshment-house licence (23 Vict. c. 27, s. 1), the wholesale spirit dealer's retail licence (24 & 25 Vict. c. 21, s. 2), the public-house licensee's beer licence, and occasional licences (26 & 27 Vict. c. 33, ss. 2, 19, 20). None of these answer to both tests above given. The wholesale spirit dealer's retail licence is now provided for by the Licensing Act, 1872, which (s. 68) makes a magistrates' licence in some cases necessary. Of the others the public-house licensee's beer licence and the occasional licences are not "under the provisions of" the recited act, which only makes some alteration in them, and are already under the control of the magistrates. The "refreshment-house licence," on the other hand, although it is under the provisions of a recited act, is not for the sale of beer, cider or wine. The wine dealer's retail wine licence was also a licence under the provisions of a recited act (23 Vict. c. 27, s. 3), and therefore required the magistrates' licence; but by sect. 73 of the Act of 1872, this licence was again made an excise licence only. The certificate required by this section is in the Licensing Act, 1872, called a "licence" (s. 74). It must, therefore, be borne in mind that all the licences, which now follow in order, are excise and not magistrates' licences.

1 Will. 4, c. 64.

"*Licence for beer not to be drunk on the premises.*"

[1 Will. 4, c. 64, s. 2. It shall be lawful for every and any person, being an householder (other than and except such persons as are hereinafter specially excepted), who shall be desirous of selling beer, ale, and porter by retail under the provisions of this act, to apply for and to obtain an excise licence for that purpose; and in every application for such licence there shall be specified, set forth, and inserted the christian name and surname of the party applying for such licence, and a description of the house or premises in which beer, ale, and porter is intended to be sold by retail by such person; and any and every such licence which shall be taken out within the limits of

the chief office of excise in London shall be granted under the hands and seals of two or more of the commissioners of excise for the time being, or of such persons as they the said commissioners of excise, or the major part of them, for the time being, shall from time to time authorize, employ, or direct for that purpose; and any and every such licence which shall be taken out in any part of England not within the said limits shall be granted under the respective hands and seals of the several collectors and supervisors of excise within their respective collections and districts; and it shall be lawful for the said commissioners of excise, or any two or more of them respectively, and for the person to be authorized, employed, or directed by the said commissioners, or the major part of them, and also for all such collectors and supervisors, and they are hereby respectively authorized and required, to grant such licence to the persons who shall apply for the same, the persons so applying first paying for such licence a duty *of one pound and one shilling*,* to be applied and accounted for as hereinafter directed; and every such licence shall be dated on the day when the same shall be granted, and shall expire *on the 10th day of October in every year*;† and every such licence shall be according to the form in the schedule annexed to this act, and shall be duly registered in the proper department of the excise: provided always, that no such licence shall authorize or entitle the party licensed to receive any licence to sell or retail wine or spirits, anything in any act or acts of parliament to the contrary thereof notwithstanding; and that no such licence shall be granted to any person being a sheriff's officer, or officer executing the legal process of any court of justice, nor to any person not being a householder assessed to the poor rates in the parish or place in which he shall be licensed to sell beer by retail; and that any licence granted to any such person shall be void to all intents and purposes; and a list or register of every licence so granted, specifying the name and place of abode of every person licensed, and the name and description of the house mentioned in such licence, shall be kept at the excise office with respect to all licences granted by the commissioners of excise or any person authorized by them, and at the

Required to be granted by excise.

Grantable to rated householders only.

Register of licences.

* Formerly 2*l.* 2*s.* See 4 & 5 Will. 4, c. 85, s. 13.

† Formerly, "at the end of twelve calendar months after the day on which such licence shall be dated." See 24 & 25 Vict. c. 91, s. 14.

office or dwelling-house of every collector and supervisor of excise in their and his respective collections and districts; and such list or register shall at all times be produced to and shall be open to the inspection and perusal of any magistrate of the county or place where such licence shall be granted and where such house shall be situate; and a copy of such list or register shall once in every calendar month be transmitted by every such collector or supervisor to the clerk of the magistrates for the district in which such licence shall be granted; and any copy of or extract from such list or register, which shall or may be at any time required by the clerk to the magistrates, shall be given to him by such collector or supervisor, whenever thereto required.

This section originally provided a licence for the sale of beer, to be drunk on or off the premises indifferently. The first section of 4 & 5 Will. 4, c. 85 (see below), converts that licence into a licence for the sale of beer to be drunk off the premises only.

Form of licence.

The form of licence given in the schedule to this act is still not expressly repealed, but the Commissioners of Inland Revenue have power "to alter the form of any licence granted by them for the purpose of bringing it into conformity with the law for the time being in force" (Act of 1872, s. 48, subs. 2). The form of excise licence issued by the Commissioners of Inland Revenue in 1872 was as follows:—

I, the undersigned, being duly authorized by the Commissioners of Inland Revenue, do hereby grant licence to to sell by retail at a house situated at in the parish of in the of beer, ale and porter, to be consumed off the premises, from the day of the date hereof, until the 10th day of October next ensuing; provided that if the licensee shall in the meantime become a sheriff's officer, or officer for executing the process of any court of justice, this licence shall become void.

Given under my hand and seal, this day of 187 , at .

Billeting.

The form provided in 1872 by the Inland Revenue for beer and cider to be drunk on the premises, which was also prescribed in the schedule to 4 & 5 Will. 4, c. 85 (still not expressly repealed), is the same, except that before the words "off the premises" are added the words "either on or." There is also added to that form the proviso, that "all provisions for billeting officers and soldiers in victualling-houses contained in any act, for punishing mutiny and desertion, and for the better payment of the army, and their quarters, are to extend and apply to the said house and premises." Houses for the sale of beer not to be drunk on the premises were exempted from billets by 4 & 5 Will. 4, c. 85, s. 5. It must be borne in mind that neither the licence under this section, nor the form above, is applicable to the sale of beer by the holder of a public-house licence, who takes out his excise licence for that purpose, under 6 Geo. 4. c. 81, and 26 & 27 Vict. c. 33, s. 2.

Partners.

Sect. 10. Provided always, that persons trading in partnership, and in one house or premises only, shall not be obliged to take out more than one licence in any one year, for selling any beer by retail under the provisions of this act: provided also, that no one licence which shall be granted by virtue of this act shall authorize or empower any person or persons to sell any beer, ale, or porter, under the provisions of this act, in any house or place other than the house or place mentioned in such licence for selling beer, ale, and porter by retail under the provisions of this act, and in respect whereof such licence shall be granted.

The excise licences granted to the holder of a public-house licence under 6 Geo. 4, c. 81, may each be granted to more than one person. There seems nothing to prevent the excise licences under consideration from being so granted, although this section seems to assume a difficulty in the case of beer licences. In cases of partnership it would seem best to apply for a magistrates' certificate or licence in the names of the partners, so that on the death of one the right to sell may survive, thus avoiding the necessity of a transfer, which in some cases a surviving partner might not have the *locus standi* to obtain-(as to transfers see pp. 36, 40).

If A. and B. share in the profits of a licensed house, and A. is the licence holder, it is no fraud on the licensing laws to sell beer to B. for sale in the licensed house (*Brooker* v. *Wood*, 3 N. & M. 96; 5 B. & Ad. 1052, overruling *Meux* v. *Humphries*, 1 M. & M. 132).

"Licence for cider not to be drunk on the premises."

Sect. 30. It shall be lawful for any person desirous of selling cider and perry by retail to apply for and to obtain an excise licence for that purpose, under the same regulations in all respects (except as hereinafter is otherwise provided) as are in this act prescribed and contained with respect to persons desirous of selling beer, ale, and porter by retail, and of being licensed for that purpose; and that all the clauses, regulations, and provisions in this act contained relating to the sale of beer by retail, and to the licences for selling the same, and to the conduct of the parties licensed, and to all other matters whatever respecting the selling of beer by retail, and the retailers thereof, and the licences for the same, and the houses where the same are sold, and the penalties against the parties licensed, shall be taken and deemed to be applicable to the sale of cider and perry by retail, and to licences for the same, and to the sellers of cider and perry by retail, as if cider and perry, and the retailers thereof, were expressly mentioned and specified in and throughout this act: provided always, that the person receiving a licence for selling cider or perry by retail

shall pay for such licence a duty of one pound one shilling, and no more, instead of the duty of two pounds two shillings hereinbefore mentioned, and which said duty of one pound one shilling shall be applied in like manner as the said duty of two pounds two shillings is hereinbefore directed to be applied; and every such licence shall be according to the form in the schedule annexed to this act: provided also, that any person licensed under this act to sell beer by retail may sell also cider and perry by retail without receiving a separate licence for that purpose; but that no person licensed to sell cider and perry by retail, and paying for such licence as herein provided, the sum of one pound and one shilling, shall be at liberty to sell beer by retail.]

Beer licence authorizes sale of cider.

The form is given in note to section 2 of 1 Will. 4, c. 64, p. 59.

[4 & 5 Will. 4, c. 85, s. 1. From and after the commencement of this act it shall be lawful for the commissioners of excise, or other persons duly authorized, to grant licences for the sale of beer, ale, porter, cider, or perry, under the provision of the said recited act, to any person applying for the same, but such licence shall not authorize the person obtaining it to sell beer or cider to be drank or consumed in the house or on the premises specified in the same licence, unless the same be granted upon the certificate hereinafter required.

4 & 5 Will. 4, c. 85, s. 1.

"*Licence for beer or cider to be drunk on the premises.*"

The "recited act" is 1 Will. 4, c. 64, the material sections of which immediately precede. The certificate referred to is the certificate as to character signed by six ratepayers, which was abolished by the Wine and Beerhouse Act, 1869, and was superseded by the magistrates' certificate now required by that act. The duty on a licence for the sale of beer to be drunk on the premises is by sect. 13 of the 4 & 5 Will. 4, 3*l.* 3s. The licence for cider to be drunk on the premises is a different licence from that to be drunk off, although it pays the same duty (sect. 15).

Sect. 15. Provided always, that nothing herein contained shall affect, or be deemed or construed to affect, the amount of duty payable according to the provisions of the said recited act on licences to retail cider and perry; but in every such licence shall be specified whether the same is granted for the sale of cider and perry by retail to be drank or consumed not in or upon the house or premises where sold, or for the retail of cider and perry to be drank and consumed in or upon the house and premises where sold.

The two cider licences distinguished.

Sect. 16. No licence to be granted under the said recited act and this act for the sale of beer or cider

Beer licence not to entitle the holder to wine licence.

shall authorize any person to take out or hold any licence for the sale of wine, spirits, or sweets or made wines, or mead, or metheglin; and if any person licensed under the said recited act and this act to sell beer or cider shall permit or suffer any wine or spirits, sweets or made wines, mead or metheglin, to be brought into his house or premises to be drunk or consumed there, or shall suffer any wine, spirits, sweets, mead, or metheglin to be drunk or consumed in his house or premises by any person whomsoever, such person shall, over and above any excise penalty or penalties to which he may be subject, forfeit twenty pounds, to be recovered, levied, mitigated, and applied in the same manner as other penalties (not being excise penalties) are by this act to be recovered, levied, mitigated and applied.]

Under 6 Geo. 4, c. 81, s. 14, no wine or spirits retail licence can be granted except on production of the beer licence granted to the holder of a public-house magistrates' licence. This section was intended to prevent the spirits and wine licence being granted on production of the beer licence granted under this act. So far as the sale of wine by retail under the shopkeeper's wine licence and the refreshment-house wine licence is concerned, this section is now repealed, and there is nothing to prevent the holder of a beer licence under this act from taking out those wine licences (24 & 25 Vict. c. 91, s. 10; 23 Vict. c. 27, ss. 1, 3, and 7, *infra*, pp. 66—68).

3 & 4 Vict. c. 61.

Holder of above licences to be resident occupier.

Qualifications of premises.

Metropolis and large towns, 15*l.*

Small towns, 11*l.*

[3 & 4 Vict. c. 61, s. 1. No licence to sell beer or cider by retail under the said recited acts or this act shall be granted to any person who shall not be the real resident holder and occupier of the dwelling-house in which he shall apply to be licensed, nor shall any such licence be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, *be of** the annual value of fifteen pounds per annum at the least, if situated in the cities of London or Westminster, or within any parish or place within the bills of mortality, or within any city, cinque port, town corporate, parish or place, the population of which according to the last parliamentary census shall exceed ten thousand, or within one mile, to be measured by the nearest public street or path, from any polling place used at the last election for any town having the like population, and returning a member or members of parliament; nor shall any such licence be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, *be of** the annual

* Formerly "be rated on." See Act of 1827, s. 46.

value of eleven pounds per annum, if situated within any city, cinque port, town corporate, parish or place, the population of which according to such last parliamentary census shall exceed two thousand five hundred and shall not exceed ten thousand, or within one mile, to be measured as aforesaid, from any polling place used at the last election for any town having the like population as last aforesaid, and returning a member or members of parliament; nor shall any such licence be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be of the annual value of eight pounds, if situated elsewhere than as aforesaid; and every licence granted contrary hereto shall be null and void.

Elsewhere, 8*l.*

The recited acts are the 1 Will. 4, c. 64, and the 4 & 5 Will. 4, c. 85, so that the qualification required by this section applied to the sale of beer, &c. whether to be drunk on or off the premises. With reference to new beer licences, however, a distinction is drawn by the Act of 1872 between houses for the sale of liquors to be drunk on and houses for the sale of liquors to be drunk off the premises. The former are now governed by sect. 45 of that act, which provides an entirely new scale (p. 131), and the latter (together with renewals of licences existing in August, 1872, for the sale of beer, &c. to be drunk on the premises) by sect. 46, which adopts the qualifications of this section, with the substitution of annual for rateable value.

Dwelling-house.

The term "dwelling-house with the premises occupied therewith," includes the whole house occupied by the applicant, though part of it may be used for other purposes than the sale of beer, such as for the sale of groceries (*Garetty* v. *Potts*, L. R., 6 Q. B. 86).

It is not necessary that the licence holder should be the sole occupier of the house, if he is substantially the occupier (*R.* v. *Kensington*, 12 Q. B. 654; 26 L. J., Q. B. 332).

Conviction of felony or of selling spirits without licence a disqualification for selling beer or cider.

Sect. 7. Every person who shall hereafter be lawfully convicted of felony, or of selling spirits without licence, shall for ever thereafter be disqualified from selling beer and cider by retail, and no licence to sell beer and cider by retail under the said recited acts or this act shall be granted to any person who shall be so convicted as aforesaid; and if any such person shall after having been so convicted as aforesaid, take out or have any licence to sell beer or cider by retail under the said recited acts or this act, the same shall be void to all intents and purposes, and every person who shall, after being convicted as aforesaid, sell any beer or cider by retail, in any manner whatsoever, shall incur the penalty for so doing without licence, and in all such cases in the prosecution for the recovery of such penalty a certificate from the clerk of the peace,

or person acting as such, of any such conviction as aforesaid, shall on the trial in such prosecution be legal evidence thereof.

The 15th sect. of the Licensing Act, 1874 (p. 144), provides that where a licensed person is convicted for the first time of (among other offences) selling spirits without a licence or of any felony, and he thereby becomes disqualified, the owner of the house may be authorized to carry on the sale of liquors by a transfer.

Transfer of the above licences on death.

Sect. 8. Upon the death of any person whatever licensed to retail beer or cider under the said recited acts or this act before the expiration of the licence, it shall be lawful for the person authorized to grant licences to authorize and empower, by indorsement or otherwise, as the commissioners of excise shall direct, the executors or administrators, or the widow or child of such deceased person, who shall be possessed of and occupy the dwelling-house and premises before used for such purpose, to continue to retail beer and cider in the same house and premises during the residue of the term for which such licence was originally granted, without taking out any fresh licence, or payment of any additional duty thereon; and also at the expiration of such licence (in case the residue of the said term shall be less than three calendar months from the death of the person licensed) to grant a new licence to such executors, administrators, or widow, on payment of the proper licence duty.

For the cases in which a public-house licence may be transferred, see ss. 4 and 14 of the Licensing Act, 1828, pp. 36, 40, now applicable to beer, cider and wine magistrates' licences (33 & 34 Vict. c. 29, s. 4, *infra*, p. 73). The present section applies only to the case of a transfer on death, and in that case from the meaning which in such cases is judicially put on the words "it shall be lawful," the Inland Revenue would be compellable to transfer the excise licence to the transferee of the corresponding magistrates' licence. In the other cases in which it is possible to obtain the transfer of a magistrates' licence there seems to be no mode of compelling the Inland Revenue to transfer the excise licence, although a transfer of the magistrates' licence may have been obtained. On the other hand, there is nothing to prevent their granting this indulgence to the transferee of the magistrates, if so disposed. Wine licences stand on the same footing in this respect as beer licences (23 Vict. c. 27, s. 12, *infra*, p. 69). The excise licences granted to the holder of a public-house licence must be transferred to the transferee of the magistrates' licence in the case of removal as well as death (6 Geo. 4, c. 81, s. 21). Section 1 of 5 & 6 Vict. c. 44, obliges the Inland Revenue to grant interim licences corresponding to those granted at petty sessions, but does not seem to extend the obligation to further cases than before.

Qualification

Sect. 18. Provided always, that nothing in this act

contained shall prevent any person from obtaining, at the expiration of his existing licence, a renewed licence in respect of any house in which he shall at the time of the passing of this act be duly licensed to retail beer or cider under the said recited acts or either of them, notwithstanding such house may not be of the annual value by this act prescribed; but it shall be lawful for the officers of excise duly authorized to grant licences to renew and continue to grant licences to such person (being in other respects properly qualified), so long as such person shall continue to be the resident holder and occupier of the same house, anything in this act to the contrary notwithstanding.]

for above licences by annual value in cases of renewal unnecessary.

[24 & 25 Vict. c. 21, s. 3. It shall be lawful for any person to take out a licence for the sale in any house or shop of table beer at a price not exceeding the rate of 1½*d.* the quart, and not to be drunk or consumed on the premises where sold, and it shall not be necessary to the obtaining of such licence that the said house or shop shall be rated to the relief of the poor to any amount.]

24 & 25 Vict. c. 21. *Table-beer licence.*

[26 & 27 Vict. c. 33, s. 1. Any person who shall have taken out an excise licence to sell strong beer in casks containing not less than four and a half gallons, or in not less than two dozen reputed quart bottles at one time, to be drunk or consumed elsewhere than on his premises, may take out an additional licence on payment of the excise duty of 1*l.* 1*s.* and 5 per cent. thereon: and the same shall authorize such person to sell beer in any less quantity, and in any other manner than as aforesaid, but not to be drunk or consumed on the premises where sold.]

26 & 27 Vict. c. 33, s. 1. *Wholesale beer dealer's retail licence.*

[33 & 34 Vict. c. 29, s. 10. A certificate for an additional licence to the holder of a strong beer dealer's licence to retail beer under the provisions of the twenty-sixth and twenty-seventh of her Majesty, chapter thirty-three, shall not, after the passing of this act, except by way of renewal from time to time of a certificate in force at the time of the passing of this act, be granted, unless on the like proof of qualification according to *annual value*,* as is required in the case of licences to retail beer for consumption on the premises under the provisions of the acts recited in the principal act for permitting the general sale of beer and cider by retail in England.]

By sect. 31 of the Licensing Act, 1874: "An additional

* Formerly "rating." See Act of 1872, s. 45, p. 131.

retail licence to sell beer for consumption off the premises may be granted at any special sessions for licensing purposes to the holder of a strong beer dealer's wholesale excise licence in the same manner and subject to the same conditions in and subject to which it might be granted at any general annual licensing meeting." Special sessions for licensing purposes are held under sect. 4 of the Licensing Act, 1828, p. 36.

23 Vict. c. 27. [23 Vict. c. 27, s. 1. From and after the first day of July, one thousand eight hundred and sixty, there shall be charged, levied, and paid, unto and for the use of her Majesty, her heirs and successors, for and upon the several licences hereinafter mentioned, the respective rates and duties following; that is to say,

	£	s.	d.
For every licence to keep a refreshment-house—			
If the house and premises in respect of which such licence shall be granted shall be under the rent and value *of* 30*l.** *a year*	0	10	6
And if the same shall be of the rent or value of 30*l.** *a year or upwards* ..	1	1	0
Refreshment-house wine licence. And for every licence to be granted as hereinafter mentioned to any licensed keeper of a refreshment-house to sell therein by retail foreign wine† to be consumed in such house or on the premises belonging thereto—			
If such house and premises shall be under the rent and value of 50*l.* a year..	3	3	0
And if the same shall be of the rent or value of 50*l.* a year or upwards	5	5	0
Shopkeeper's wine licence. And for every licence to be taken out by any person for the selling by retail in any shop of foreign and British wine not to be consumed in the house or shop or on the premises where sold—			
If the house and premises shall be under the rent and value of 50*l.* a year..	2	2	0
And if the same shall be of the rent or value of 50*l.* a year or upwards	3	3	0

By 24 & 25 Vict. c. 91, s. 9, certain abatements are made of the duties granted on refreshment-houses in respect of which a wine licence is taken out; and by section 10 of the same act, it is declared that persons licensed to retail beer are not precluded

* Formerly 20*l.* See 24 & 25 Vict. c. 91, s. 9.
† Now also sweets. See 26 & 27 Vict. c. 33, s. 18.

from taking out wine licences under this act. The "refreshment-house licence," created by this section, does not require a magistrates' certificate, for although this act is one of the recited acts referred to in 32 & 33 Vict. c. 17, s. 4, the refreshment-house licence is not a licence for the sale of "beer, cider and wine." It must not, however, be confused with the "refreshment-house wine licence," which does require a magistrates' certificate. Refreshment-houses.

Sect. 3. Every person who shall keep a shop for the sale of any goods or commodities other than foreign wine, or who shall have taken out a licence as a dealer in wine (except persons expressly disqualified by this act), shall, without producing or having any other licence or authority, be entitled to take out a licence under this act to sell by retail, and in reputed quart or pint bottles only, in such shop, foreign wine not to be consumed on the premises where sold, anything in any former act to the contrary notwithstanding. Qualification for shop-keeper's wine licence.

The dealer in wine does not now apply to the magistrates for a certificate (Act of 1872, s. 73). A holder of a beer-house licence is not precluded from taking out a licence under this section (24 & 25 Vict. c. 91, s. 10). The form of licence is the same *mutatis mutandis* as the form of beer licence (p. 59). Licensing Act, 1872.

Sect. 4. Every sale of foreign wine in any less quantity than two gallons, or in less than one dozen reputed quart bottles, at one time, shall be deemed to be a selling by retail. "Retail."

Sect. 6. All houses, rooms, shops or buildings kept open for public refreshment, resort, and entertainment, at any time between the hours of *ten** of the clock at night, and five of the clock of the following morning, not being licensed for the sale of beer, cider, wine, or spirits respectively, shall be deemed refreshment-houses within this act, and the resident, owner, tenant, or occupier thereof shall be required to take out a licence under this act to keep a refreshment-house; and every person who shall keep any house, room, shop, or building for the purpose of selling therein any victual or refreshment to be consumed on the premises where the same shall be sold (except beer, cider, wine, and spirits sold respectively under a proper licence in that behalf), and every person who shall keep any house, room, shop, or building for the consumption therein by the public of any refreshment (except as aforesaid), although the same shall not be sold therein, may, if he shall think Refreshment-house licence required. Qualification for refreshment-house licence.

* Formerly "nine." See 24 & 25 Vict. c. 91, s. 8.

fit, take out a licence under this act to keep a refreshment-house; and in all proceedings and upon all occasions whatever it shall be sufficient to describe by the term refreshment-house any house, room, shop, or building in which any such article as aforesaid (except as aforesaid) is sold to be consumed, or is consumed as aforesaid, without further or otherwise designating or describing the same.

A dancing-house, where persons sent out for beer to a neighbouring public-house, is not a house kept open for public refreshment, resort, and entertainment, so as to require a refreshment-house licence (*Taylor* v. *Oram*, 31 L. J., M. C. 252). The form of licence is similar to the form of beer licence (see p. 59).

It would seem that a beer-house keeper may, if he sells refreshments other than beer, take out a refreshment-house licence (24 & 25 Vict. c. 91, s. 10).

Qualification of person for refreshment-house wine licence.

Sect. 7. Every person who shall be licensed to keep a refreshment-house, and shall pursue therein the trade or business of a confectioner, or shall keep open such house as an eating-house, for the purpose of selling, to be consumed therein, animal food or other victuals wherewith wine or other fermented liquors are usually drunk, shall be entitled (subject to the terms and conditions of this act, and not being expressly disqualified thereby,) to take out a licence to sell foreign wine by retail in such refreshment-house, to be consumed on the premises where the same shall have been sold, without producing or having any other licence or authority than as aforesaid; and every confectioner and eating-house keeper respectively who shall have taken out such licence to retail wine under this act, shall not be subject or liable to any penalty or forfeiture under any other act or acts by reason or on account of his selling wine by retail, or having the same in his possession in his entered premises, anything in any other act or acts to the contrary notwithstanding.

There is nothing to prevent a beer-house keeper from taking out a refreshment-house wine licence, or a shopkeeper's wine licence, if he is otherwise qualified (24 & 25 Vict. c. 91, s. 10). The refreshment-house wine licence now authorizes the sale of sweets and made wines, mead and metheglin (26 & 27 Vict. c. 33, s. 18).

Qualifications of house for refreshment-house wine licence.

Sect. 8. Provided always, that no licence to sell foreign wine by retail to be consumed on the premises shall be granted for any refreshment-house which, with the premises belonging thereto and occupied therewith,

shall be under the *annual value** of ten pounds a year, nor for any refreshment-house situated in any city, borough, town, or place containing a population exceeding ten thousand, according to the then last parliamentary census, if such refreshment-house, with the premises belonging thereto and occupied therewith, shall be under the *annual value** of twenty pounds a year; and no sheriff's officer, or officer executing the legal process of any court of justice, shall be capable of receiving or using any licence under this act to sell wine by retail to be consumed on the premises; and every licence which shall be granted contrary hereto shall be void to all intents and purposes. Disqualifications.

Sect. 11. All licences which shall be granted under the authority of this act between the thirty-first day of March and the first day of May in any year shall be dated on the first day of April, and all licences which shall be granted at any other time shall be dated on the day on which the same shall be granted; and all such licences, whensoever granted, shall have effect on and after the day of the date thereof until the first day of April then next following, and shall be renewed annually on payment of the duty by this act charged thereon respectively. Duration of licence.

Sect. 12. Upon the death of any person licensed under this act before the expiration of the licence, it shall be lawful for the persons authorized to grant licences to authorize and empower, by indorsement or otherwise, as the Commissioners of Inland Revenue shall direct, the executors or administrators or the widow or child of such deceased person who shall be possessed of and occupy the dwelling-house and premises before used for such purpose, to continue the business for which such licence was granted, and to sell in the same house and premises such articles as by the said licence are authorized to be sold therein, during the residue of the term for which such licence was originally granted, without taking out any fresh licence or payment of any additional duty thereon, and the person so authorized and empowered shall then be deemed to be a person licensed under this act, and accordingly subject to the provisions, conditions, regulations, and penalties contained therein. Transfer of such licences.

See note to sect. 8 of 3 & 4 Vict. c. 61, *supra*, p. 64.

Sect. 22. Every person who shall be convicted of Disqualification of con-

* Formerly "rent and value." See Act of 1872, s. 46.

victed person.

felony or of selling spirits without licence, shall for ever thereafter be disqualified from selling wine by retail, and no licence to sell wine by retail under this act shall be granted to any person who shall have been so convicted as aforesaid; and if any person shall, after having been so convicted as aforesaid, take out or have any licence to sell wine by retail under this act, the same shall be void to all intents and purposes; and every person who shall, after being convicted as aforesaid, sell any wine by retail in any manner whatsoever, shall incur the penalty for so doing without licence; and in all such cases, in the prosecution for the recovery of such penalty, a certificate from the clerk of assize or the clerk of the peace or person acting as such of any such conviction as aforesaid shall on the trial in such prosecution be legal evidence thereof.]

For disqualifications generally, see p. 11. As to the right of the owner upon the disqualification of the tenant, see Act of 1874, s. 15, p. 144.

32 & 33 Vict. c. 27—*contd.*

Certificates preliminary to above licences granted under Act of 1828.

V. Certificates under this act shall be granted by the justices assembled at the general annual licensing meeting held in pursuance of an act of the session of the ninth year of the reign of King George the Fourth, chapter sixty-one, intituled "An Act to regulate the granting of licences to keepers of inns, ale-houses, and victualling-houses in England," or at some adjournment of such meeting held in pursuance of the said last-mentioned act.

As the section originally stood it contained a proviso relative to the grant of certain licences at special sessions, which is repealed by 33 & 34 Vict. c. 29, s. 4. See p. 73. Authority to grant at special sessions licences for the sale of strong beer by retail, which was one of the licences mentioned in the proviso, is restored by the Licensing Act, 1874, s. 31, p. 126. For the general annual licensing meeting, see p. 30.

Form of certificate.

VI. A certificate under this act shall specify the name and address of the person thereby authorized to receive a licence, the description of licence or licences authorized to be granted to him, and whether such licence or licences is or are to be granted for the sale of beer, cider, or wine to be consumed on or off the premises, and the situation of the house or shop in respect of which such grant is authorized. It shall be in force for one year from the date of its being granted.

As the section originally stood, it prescribed a statutory form of certificate. But so much of the section which relates to the form of certificate is repealed in the schedule of the Act of

1872, sect. 48 of which requires licences and certificates to be in the form prescribed by a Secretary of State. For the forms which have been prescribed, see Appendix.

Notice of application for certificate.

VII. Every person intending to apply to the justices for a certificate under this act shall, twenty-one days at least before he applies, give notice in writing of his intention to one of the overseers of the parish, township, or place in which the house or shop in respect of which his application is to be made is situate, and to *the superintendent of police of the district*,* and shall in such notice set forth his name and address, and a description of the licence or licences for which he intends to apply, and of the situation of the house or shop in respect of which the application is to be made; and in the case of a house or shop not theretofore licensed for the sale by retail of beer, cider, or wine, such person shall also within the space of twenty-eight days before such application is made cause a like notice to be affixed and maintained between the hours of ten in the morning and five in the afternoon of two consecutive Sundays on the door of such house or shop, and on the principal door or on one of the doors of the church or chapel of the parish or place in which such house or shop is situate, or, if there be no such church or chapel, on some other public and conspicuous place within such parish or place.

Where application is made to the justices for the grant of a certificate under this act by way of renewal only, notice in pursuance of this section shall not be requisite.

Notice.

The notice is in time if it be given twenty-one days before the adjourned meeting under 9 Geo. 4, c. 61, s. 3, although it was not given twenty-one days before the general annual licensing meeting (*R.* v. *West Riding JJ., Drake's case*, L. R., 5 Q. B. 33; 39 L. J., M. C. 17; 18 W. R. 259). The notice under this section is now applied to all licences (Act of 1872, s. 40, subs. 1).

Application of Act of 1828.

VIII. All the provisions of the said act of the ninth year of the reign of King George the Fourth as to the terms upon which, and the manner in which, and the persons by whom, grants of licences are to be made by the justices at the said general annual licensing meeting, and as to appeal from any act of any justice, shall, so far as may be, have effect with regard to grants of certificates under this act, subject to this qualification,

Limitation of power to refuse licences.

* Formerly "some constable or peace officer acting within such parish, township, or place." See Amending Act, s. 4, p. 73.

that no application for a certificate under this act in respect of a licence to sell by retail beer, cider, or wine not to be consumed on the premises shall be refused, except upon one or more of the following grounds; viz.:—

(1.) That the applicant has failed to produce satisfactory evidence of good character:

(2.) That the house or shop in respect of which a licence is sought, or any adjacent house or shop owned or occupied by the person applying for a licence, is of a disorderly character, or frequented by thieves, prostitutes, or persons of bad character:

(3.) That the applicant having previously held a licence for the sale of wine, spirits, beer, or cider, the same has been forfeited for his misconduct, or that he has through misconduct been at any time previously adjudged disqualified from receiving any such licence, or from selling any of the said articles:

(4.) That the applicant, or the house in respect of which he applies, is not duly qualified as by law is required:

Where an application for any such last-mentioned certificate is refused on the ground that the house in respect of which he applies is not duly qualified as by law is required, the justices shall specify in writing to the applicant the grounds of their decision.

"*By* whom." It would seem that the expression "the person *by* whom" is a clerical error for the persons *to* whom, as *by* the justices immediately follows.

The Licensing Act, 1872, s. 74, repealed the 27th sect. of the Act of 1828, which relates to appeals "except so far as it relates to the removal or transfer of licences." It was held, however, that the repeal did not affect licences which may be granted under the Wine and Beerhouse Act, 1869, because no part of this section was repealed, and that section kept alive the 27th section of the Act of 1828, so far as necessary for the purposes of this section, so that an appeal lay even from a refusal to grant a new licence under the Act of 1869 (*R.* v. *Smith*, L. R., 8 Q. B. 146; 42 L. J., M. C. 46; 21 W. R. 382; 28 L. T. 129). This obvious anomaly is now removed by the Licensing Act, 1874, s. 27 (p. 158), which repeals so much of sect. 8 of the Licensing Act, 1869, "as incorporates any repealed enactment." There is therefore, now, no appeal from a refusal to grant a new licence in any case.

Appeal. It was held that on an appeal from a refusal to grant an ale-house licence under 9 Geo. 4, fresh evidence might be heard, and that practice is by this section adopted with reference to certificates for beer licences (*R.* v. *Pilgrim*, L. R., 6 Q. B. 89; 40 L. J., M. C. 3).

The discretion of the justices under this section is precisely similar to that given by 9 Geo. 4, c. 61, and in considering an application for a certificate for a new licence they are bound to hear evidence as to the necessity for a new house in the neighbourhood (*R.* v. *Lancashire*, L. R., 6 Q. B. 97; 40 L. J., M. C. 17). Discretion of justices.

As to the discretion of the justices under 9 Geo. 4, c. 61, see p. 32.

[33 & 34 Vict. c. 29, s. 3. In this act the words "the principal act" mean the Wine and Beerhouse Act, 1869, and the word "sweets" includes sweets, made wines, mead and metheglin. 33 & 34 Vict. c. 29. (Amendment Act, 1870.)

Sect. 4. The provisions of the principal act, with reference to the grant, duration and transmission of certificates, shall be amended as follows: (that is to say,) As to transfers, fees, sealing licences, &c.

(1.) The seventh section of the principal act shall be read as if for the words "constable or peace-officer acting within such parish, township or place," there were substituted the words "the superintendent of police of the district," and the notice required by that section to be given to any overseer or constable may be served by a registered letter through the post:

(2.) Where a certificate is now required to be signed by a majority of justices, it shall be sufficient if, instead of such signature, the concurrence of such majority be signified by means of an impression from an official seal or stamp, in such form as the justices may direct, affixed in the presence of the justices in sessions assembled, and verified in the case of each certificate by the signature of their clerk. Any seal purporting to be so affixed and verified shall be received in evidence without further proof; and if any unauthorized person imitate or affix an impression of such seal on any certificate or imitation of a certificate, or knowingly use a certificate or imitation of a certificate falsely purporting to be sealed in pursuance of this section, he shall be guilty of forgery: Seal of justices substituted for signature. Forgery of seal.

(3.) For every certificate granted by way of renewal under the principal act or this act, there shall be payable to the clerk of the justices the sum of four shillings for all matters to be done by such clerk, and one Fees.

shilling for the constable or officer for service of notices; and if any clerk of justices demand or receive any greater or further fee or payment in respect of any such renewal, whether for himself or for any other officer or person, he shall, upon summary conviction, be liable to a penalty of five pounds:

Discretion of justices.

(4.) It shall be in the discretion of the justices to whom an application for a transfer is made, either to allow or refuse the application, or to adjourn the consideration thereof:

Act of 1828 applied to transfers, &c.

(5.) The proviso of the fifth section of the principal act and the ninth section of the principal act shall be repealed, and, subject to the provisions of this section, all the provisions of the act of the ninth year of George the Fourth, chapter sixty-one, and acts amending the same, relating to the time for which justices' licences are to be in force, and relating to the fees payable for such licences, and relating to the transfer, removal and transmission of such licences, and the grant of licences upon assignment, death, change of occupancy or other contingency, and relating to copies of such licences, and relating to grants or transfers of such licences without the attendance of an applicant who is hindered by sickness, infirmity or other reasonable cause, shall have effect with regard to certificates granted or to be granted under the principal act and this act.

For the provisions of 9 Geo. 4, c. 61, relating to the time of currency, see sect. 13, p. 39; relating to fees, sect. 15, p. 45; relating to transfer, ss. 4 and 14, pp. 36, 40 (see also 5 & 6 Vict. c. 44, p. 42); relating to the applicant's sickness, sect. 12, p. 39. As to copies of lost licences, see 5 & 6 Vict. c. 44, ss. 2 and 3, p. 44, amending 9 Geo. 4, c. 61. Notwithstanding that this section applies all the provisions of 9 Geo. 4, c. 61, relating to transfers to the case of certificates, it would seem that there is in the case of a transfer of a certificate the same limited discretion only to refuse as under the 8th and 19th sections of the principal act, because an application for a transfer is an application for a certificate within the meaning of those sections.

Postponement of application.

Sect. 11. Where any applicant for the grant or renewal of a certificate has, through inadvertence or misadventure, failed to comply with any of the preliminary requirements of the principal act or this act, or any act incorporated therewith, the justices may, if they shall so think fit, and upon such terms as they

think proper, postpone the consideration of the application to an adjourned meeting, and if at such adjourned meeting the justices shall be satisfied that such terms have been complied with, they may proceed to grant or withhold such certificate as if the preliminary requirements of the principal act had been complied with.]

32 & 33 Vict. c. 27—*contd.*

IX. *Temporary transfer. Repealed by the Amending Act*, 33 & 34 *Vict c.* 29, *s.* 4, *subs.* 5, *p.* 74.

X. *This section applied only to the time prior to the first licensing meeting held under the act, and is now spent.*

Forging certificates.

XI. If any person forge, or tender knowing the same to have been forged, any certificate authorized to be granted by this act, he shall, on summary conviction before two or more justices, be liable to a penalty not exceeding twenty pounds, or, in the discretion of the justices before whom he is tried, to imprisonment for any period not exceeding six months, with or without hard labour. Any licence granted in pursuance of such forged certificate shall be void, and any person making use of such forged certificate, knowing the same to have been forged, shall be disqualified from obtaining at any time thereafter a licence for the sale of beer, cider or wine by retail under any of the said recited acts.

To forge a certificate would also be a misdemeanor at common law. For the rights of the owner upon the disqualification of the tenant through forging a certificate, see Licensing Act, 1874, s. 15, p. 144.

XII. *Power of entry to constables on premises licensed under recited acts for sale of beer, &c. not to be drunk on the premises. Repealed, Licensing Act*, 1872. *See now Licensing Act*, 1874, *s.* 16.

XIII. *This section, which made proof of payment of money unnecessary in order to prove a sale, is repealed by the Act of* 1872. *See now sect.* 62 *of that act.*

XIV. *This section, which, in case of the charge of evasion of a licence for sale of liquor not to be drunk on the premises, made it unnecessary to prove occupation by the licence-holder of the place to which the liquor was carried for the purpose of evasion, is repealed by the Act of* 1872. *See now sect.* 4 *of that act.*

XV. *Penalty for suffering liquor to be drunk in*

closing hours. Repealed, Licensing Act, 1872. *See now sect.* 9 *of the Act of* 1874, *p.* 101.

XVI. *Penalty on persons present during closing hours. Repealed, Licensing Act,* 1872. *See now sect.* 25 *of that act.*

XVII. *Effect of previous convictions. Repealed, Licensing Act,* 1872.

XVIII. *Table-beer shops subjected to closing regulations, &c. Repealed, Licensing Act,* 1872.

Limitation of power to refuse licences existing on 1st May, 1869.

XIX. Where, on the first of May, one thousand eight hundred and sixty-nine, a licence under any of the said recited acts is in force with respect to any house or shop for the sale by retail therein of beer, cider, or wine to be consumed on the premises, it shall not be lawful for the justices to refuse an application for a certificate for the sale of beer, cider, or wine to be consumed on the premises in respect of such house or shop, except upon one or more of the grounds upon which an application for a certificate under this act in respect of a licence for the sale of beer, cider, or wine, not to be consumed on the premises, may be refused, in accordance with this act.

For the grounds upon which certificates for the sale of beer, cider and wine not to be drunk on the premises may be refused, see sect. 8 of the act, p. 72.

So much of this section "as relates to offences" is repealed by the Act of 1872. The repealed portion consisted of three provisos, by which any premises having the privileges of the section, on the licence attached to which more than one conviction of offences against its tenor were recorded, might be placed in the category of houses licensed after the passing of the act.

There is great ambiguity in the words "where on the 1st May, 1869, a licence is in force with respect to any house," but it seems now fully cleared up by two decisions in the Court of Queen's Bench, and the section of the amending act which immediately follows. In *Hargreaves* v. *Dawson* (24 L. T., N. S. 420), there was a licence in force in respect of the house in question on the 1st May, 1869, but it was not renewed at the licensing meeting of that year. In 1870, another person applied for a licence in respect of the same house, and claimed the benefit of this section, but it was held not applicable as the licence had been allowed to drop. In *R.* v. *Curzon* (L. R., 8 Q. B. 400; 42 L. J., M. C. 155; 21 W. R. 887), the licence was held in 1869 by the same person who applied for a renewal in 1873, but had not been renewed in 1872, and this section was held inapplicable. The result is, that in order to take advantage of the section the licence-holder must hold a licence which has been kept up continuously by renewal since the 1st May, 1869.

33 & 34 Vict. c. 29, s. 7. To extend to transferred licences.

[33 & 34 Vict. c. 29, s. 7. The nineteenth section of the principal act shall extend to licences granted by way of renewal from time to time of licences in force

on the first day of May one thousand eight hundred and sixty-nine, whether such licences continue to be held by the same person or have been or may be transferred to any other person or persons.]

The effect of this section is to allow the holder of a licence to take advantage of sect. 19 of the Act of 1869, although he is not the same person who then held it, but it has been transferred in the meantime. The section, however, does not dispense with the necessity for the continuous existence of the licence since the 1st May, 1869.

XX. Nothing in this act contained shall be deemed to affect— 32 & 33 Vict. c. 27—*contd.* Savings.

(1.) The privileges heretofore enjoyed by any university in England, or the chancellor, masters, and scholars of the same, or their successors :

(2.) The privileges heretofore enjoyed by the masters, wardens, freemen, and commonalty of the vintners of the city of London, except as to those freemen of the said vintners who have obtained their freedom by redemption only :

(3.) The privileges heretofore enjoyed by the mayor or burgesses of the city of St. Alban's in the county of Hertford, or their successors :

(4.) The right of any person who is duly authorized by justices of the peace to keep a common inn, ale-house, or victualling house to take out any excise licence :

(5.) The grant of any occasional licence, or the power of any person duly authorized by the excise to sell beer, spirits, or wine at any fair or public races.

The saving for the sale of liquors at fairs and races is repealed by Licensing Act, 1874, s. 18, p. 111. For the other savings see note to sect. 72 of the Licensing Act, 1874, p. 151.

XXI. The several parts of the act set forth in the second schedule hereto shall be repealed to the extent therein specified so far as relates to any licence under any of the said recited acts granted after the passing of this act within any place to which this act applies : provided that such repeal shall not affect— Repeals.

(1.) Any liability incurred or thing duly done before the commencement of this act :

(2.) Any penalty, forfeiture, or other punishment incurred in respect of any offence committed before the commencement of this act :

(3.) Any legal proceeding or legal remedy for enforcing or recovering any such liability, thing, penalty, forfeiture, or punishment as aforesaid.

Schedule. The schedule sets forth the following acts which are repealed by this section:—1 Will. 4, c. 64, s. 2 (so far as it requires the licence to be granted within ten days after application); 4 & 5 Will. 4, c. 85, ss. 2, 3, 8 and 9; 3 & 4 Vict. c. 61, ss. 2, 3, 4 (so far as relates to the certificate of annual value), 5 and 6; 23 Vict. c. 27, ss. 13, 14 and 15; 24 & 25 Vict. c. 21, s. 3 (so far as it renders a certificate unnecessary).

The Wine and Beerhouse Act, 1869, was originally to be in force for two years from the 12th July, 1869. By 33 & 34 Vict. c. 29, it was continued to the end of the session of parliament of 1872. The Act of 1872 made it perpetual; see sect. 75 of that act, p. 156.

IV.

THE LICENSING ACTS, 1872-1874.

(35 & 36 Vict. c. 94, and 37 & 38 Vict. c. 49.)

35 & 36 Vict. c. 94.

An Act for regulating the Sale of Intoxicating Liquors. [10th August, 1872.]

Whereas it is expedient to amend the law for the sale by retail of intoxicating liquors, and the regulation of public-houses and other places in which intoxicating liquors are sold, and to make further provision in respect of the grant of new licences for the sale of intoxicating liquors, and the better prevention of drunkenness :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This act may be cited as "The Licensing Act, 1872." Short title.

2. This act shall not extend to Scotland. Extent of act.

For the application of the act to Ireland, see sections 76 to 90. A distinct licensing Act for Ireland was passed in 1874 (37 & 38 Vict. c. 69); and, in general, both Scotland and Ireland have distinct licensing laws. For the Scotch law, see 9 Geo. 4, c. 58; 16 & 17 Vict. c. 67 (The Forbes Mackenzie Act); 25 & 26 Vict. c. 35; and Barclay's "Digest of the Laws of Scotland," 3rd ed., p. 824, where it is compared with the English. For the Irish law, see 5 Geo. 4, c. 102; 3 & 4 Will. 4, c. 68; 6 & 7 Will. 4, c. 38; and 23 & 24 Vict. c. 107.

[Act of 1874, s. 1. This act and the principal act shall, so far as is consistent with the respective tenors of such acts, be construed as one act, and may be cited together as "The Licensing Acts, 1872—1874 ;" but 37 & 38 Vict. c. 49. Acts 1872-1874 to be read as one.

this act may, if necessary, be cited separately as "The Licensing Act, 1874."

The Act of 1874 recites in the preamble that "it is expedient to amend the Licensing Act, 1872, in this act referred to as the principal act." In the present edition the sections of the amending act have been interpolated in their appropriate places among the sections of the principal act, so that the two may be read in juxtaposition.

Commencement of Act of 1874.

Sect. 2. This act shall come into operation as to the provisions relating to hours of closing (not being provisions relating to the grant of early closing licences), and as to the provision repealing section twenty-four of the principal act, on the tenth of October, one thousand eight hundred and seventy-four, and not before, and as to the remainder, immediately on the passing of this act.]

The provisions relating to the hours of closing are contained in ss. 3—11 of this act (see p. 97), and are comprised under a heading "hours of closing." The provisions as to the determination by the licensing committee of the places which are to be considered within the area of towns, and which are to be considered populous places for closing purposes, is strictly a provision relating to closing, but it is expressly to come into operation "as soon as may be after the passing of the act, and not later than the 1st September, 1874." (See s. 32). As to early closing licences, see s. 7, p. 135.

Illicit Sales.

Act of 1872—*contd.*

Sale without licence, or in place not authorized by licence.

3. No person shall sell or expose for sale by retail any intoxicating liquor without being duly licensed to sell the same, or at any place where he is not authorized by his licence to sell the same. Any person selling or exposing for sale by retail any intoxicating liquor which he is not licensed to sell by retail, or selling or exposing for sale any intoxicating liquor at any place where he is not authorized by his licence to sell the same, shall be subject to the following penalties; that is to say,

Penalties for sale without licence.

(1.) For the first offence he shall be liable to a penalty not exceeding fifty pounds, or to imprisonment with or without hard labour for a term not exceeding one month:

(2.) For the second offence he shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment with or without hard labour for a term not exceeding three months, and he may, by order of the court by which he is tried, be disqualified for any term not

exceeding five years from holding any licence for the sale of intoxicating liquors:

(3.) For the third and any subsequent offence he shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment with or without hard labour for any term not exceeding six months, and may by order of the court by which he is tried be disqualified for any term of years or for ever from holding any licence for the sale of intoxicating liquors.

Forfeiture of licence on second conviction.

In addition to any other penalty imposed by this section any person convicted of a second or any subsequent offence under this section shall, if he be the holder of a licence, forfeit such licence, and in the case of a conviction for any offence under this section, the court may, if it thinks expedient so to do, declare all intoxicating liquor found in the possession of any such person as last aforesaid, and the vessels containing such liquor, to be forfeited.

Saving in case of death or bankruptcy.

No penalty shall be incurred under this section by the heirs, executors, administrators, or assigns of any licensed person who dies before the expiration of his licence, or by the trustee of any licensed person who is adjudged a bankrupt, or whose affairs are liquidated by arrangement before the expiration of his licence in respect of the sale or exposure for sale of any intoxicating liquor, so that such sale or exposure for sale be made on the premises specified in such licence, and take place prior to the special session then next ensuing, or (if such special session be holden within fourteen days next after the death of the said person or the appointment of a trustee in the case of his bankruptcy, or the liquidation of his affairs by arrangement) take place prior to the special session holden next after such special session as last aforesaid.

"Sale by retail."

Sale by retail is in the case of spirits a sale of less than two gallons (30 Geo. 3, c. 28, s. 15); in the case of wine, of less than two gallons or one dozen reputed quart bottles (23 Vict. c. 27, s. 4); in the case of beer or cider, of less than four gallons and a half (4 & 5 Will. 4, c. 85, s. 19); in the case of sweets or home-made wines, of less than fifteen gallons (4 & 5 Will. 4, c. 77, s. 9). Any fermented liquor containing more than 40 per cent. of proof spirit is considered spirits (23 Vict. c. 27, s. 21). See also as to sale by retail, s. 74, *infra*.

"Intoxicating liquor."

By the interpretation clause (s. 74) "intoxicating liquor" means "spirits, wine, beer, porter, cider and sweets and any fermented, distilled or spirituous liquor which cannot according to any law for the time being in force be legally sold without a licence from the Commissioners of Inland Revenue;" and "licence" means a licence for the sale of intoxicating liquors

granted by justices under the Act of 1828 or 1869. By s. 62 (p. 147), the passing of money is not essential to a sale, if the transaction be in the nature of a sale. Although the interpretation clause gives no meaning to "licensed," yet the use in this section of the word "licensed" in close connection with "licence," shows that the participle has in this section the meaning of the substantive. It will be seen that the section does not apply to sales of liquor which do not in any case require more than an excise licence, such as the sale of methylated spirits; but it would probably apply to such sales as *primâ facie* require a magistrates' licence, such as a sale of spirits, although the person selling them be a wholesale spirit dealer, who might have taken out a retail spirit licence independently of the magistrates.

Construction. According to the strict literal construction of the section, sales are prohibited irrespectively of where they take place. It might be argued that as no person may sell without licence; and "licence" means a magistrates' licence; therefore, except as authorized by a magistrates' licence, no sale may take place at all. This reasoning might be made to apply even to a sale of a kind for which

Clubs. no licence is provided. In this view a sale without licence in a boarding-house or a club would be liable to the penalties of this section. In certain clubs where the liquors are bought by a committee on behalf of the members, there would appear to be no "sale," and therefore no liability, the committee being merely agents of the consumers. Nor would there appear to be "a transaction in the nature of a sale" (sect. 62, p. 147), which words are meant only to include exchange and barter. In boarding-houses and in those clubs where the character of owner and consumer are distinct, the strict literal interpretation, if the right one, will apply, and any sale of liquor therein without a magistrates' licence will render the seller liable to penalty. It is conceived, however, that the strict literal construction is not the right one so far as the place of consumption is concerned. The licensing law is directed to the regulation of places of public resort. It is clear that neither boarding-houses nor clubs, not being "inns, ale-houses or victualling-houses," may be licensed under the Act of 1828, which empowers magistrates to grant licences to places of public resort only. (See *Parker* v. *Flint*, 12 Mod. 254; *R.* v. *Wilkinson*, 10 L. T. 370; Willcock on Inns, p. 3.) In the case of spirits, therefore, if this section applied to their sale in a club, there is the apparent absurdity that the law should forbid persons selling a liquor without a licence, and at the same time prevent their obtaining one. If this absurdity be sufficiently clear to override the strict literal construction in the case of spirits, it would seem that, although these establishments may obtain licences for the sale of other liquors, yet that the acts which allow such licences to be taken out, being enabling acts in favour of particular liquors, cannot in this instance be used so as to restrict the sale of those very liquors. Moreover, the offence provided for by this section, *i. e.*, sale without licence, seems to assume that there is a licence which, if held by the seller, would have made the sale lawful. This argument is strengthened by the use of the words "illicit sales" in the heading, which may be used in any case where construction is doubtful. (*Marriage* v. *Eastern Counties Railway*, 31 L. J., Ex. 73.) It would seem, therefore, that the word sale in this section must be taken to mean sale of the kind with which

the licensing laws are concerned, that is, sale in a place of public resort. Whether an establishment is to be looked on as a place of public resort or not, is a question of fact in each case. A so-called club may be so easy in its terms of subscription and admission as to be, in fact, a public house, in which case its proprietor will be liable for sale without licence. The exclusive character of some clubs makes them very far from being places of public resort; while some of those clubs which are called working-men's clubs may, from a desire to be as comprehensive as possible, approach very nearly to that description. It might be perhaps thought that certain sales need the excise licence only; but this is not so, because no excise licence of the kind requiring a magistrates' licence is of any validity without that magistrates' licence. (6 Geo. 4, c. 81, s. 13; Wine and Beerhouse Act, 1869, s. 4, p. 51.)

Penalties.

A penalty for sale without licence is also provided by 35 Geo. 3, c. 113, which is a Police Act (*R.* v. *Hanson*, 4 B. & Ald. 319; 6 M. & S. 116), and is still unrepealed. That act (sect. 14) fixes the minimum penalty of 10*l.* for a first conviction, and of 20*l.* for a second conviction, of selling exciseable liquors without being duly licensed, and also prescribes an *ipso facto* disqualification upon a second conviction. The Act of 1828, s. 18, prescribes a maximum penalty of 20*l.* and a minimum penalty of 5*l.* for each offence, by which implied repeal of 35 Geo. 3, c. 113, the minimum penalty is reduced to 5*l.* in any case. The present act fixes a maximum of 50*l.*, and expressly repeals sect. 18 of the Act of 1828. (See sched.) The repeal of a repealing act however does not revive the act originally repealed (13 Vict. c. 21, s. 5). Neither of the early acts, from the use of the term "exciseable liquors," applies to sweets or beer. (See *R.* v. *Lancashire*, 7 E. & B. 839; 26 L. J., M. C. 171; *Jones* v. *Whittaker*, L. R., 5 Q. B. 541; 39 L. J., M. C. 139.) The result would seem to be, that, as far as wine and spirits are concerned, 5*l.* is the minimum penalty. A metropolitan police magistrate however has a special power to mitigate all penalties (2 & 3 Vict. c. 71, s. 35). The power to disqualify upon a second conviction must be taken to repeal the *ipso facto* disqualification of 35 Geo. 3, c. 113, as being inconsistent with it. If less than the minimum penalty appears on the conviction to have been imposed, the conviction is bad. (*Whitehead* v. *R.*, 7. Q. B. 582; *R.* v. *Fletcher*, Russ. & Ry. 58; Paley on Convictions, 5th edit. 272.)

Excise penalties.

With the exception referred to above, all the old police law concerning sale without licence is repealed. The excise law on the same subject is contained in the following enactments:— 6 Geo. 4, c. 81, s. 26 (general); 1 Will. 4, c. 64, s. 7; 4 & 5 Will. 4, c. 85, s. 17 (beer); 23 Vict. c. 27, s. 19 (wine). All excise penalties are unaffected by the present act (see sect. 2, subs. 4, *infra*), but excise officers may sue for any penalty under it. (See sect. 51, p. 83.) Excise penalties can only be recovered on information laid by an excise officer (7 & 8 Geo. 4, c. 53, ss. 17, 63), whereas police penalties may be enforced on the prosecution of any person. An excise act (23 & 24 Vict. c. 114, ss. 195—197) authorizes the apprehension without warrant by any person whomsoever in the case of a sale of spirits without licence.

Executors.

As to the transfer to executors of their testator's licence, see sect. 14 of the Act of 1828 (*supra*, p. 40).

Sale under a void licence.

The question whether or not the penalties for sale without licence can be incurred by the innocent holder of a licence which is void from an irregularity in the jurisdiction of the magistrates who granted it has been stated as a doubtful one. (Paley on Convictions, 5th ed. p. 243, citing *R.* v. *Bryan*, And. 81; but see *R.* v. *Downs*, 3 T. R. 570.) In *Brown* v. *Nicholson* (28 L. J., M. C. 49) it appears to have been assumed by the court that the penalty was recoverable, Crowder, J., observing that it was "peculiarly harsh to raise the question of jurisdiction by proceeding for the penalty against the licence holder instead of by *quo warranto* against the justices." It would seem clear, however, on the principle "actus non facit reum, nisi mens sit rea," as applied in *Bowman* v. *Blyth* (7 E. & B. 26) and *R.* v. *Dobson* (7 East, 218), that a person selling under a licence which is void by reason of some fact not known to him at the time of the sale would not be liable to the penalty for sale without licence. In order to make him so liable, and to recover the penalty, it would be necessary to give him notice of the fact by reason of which the licence was void.

It lies on the defendant to prove his licence, if he has one. (Paley on Convictions, 5th ed. p. 124, citing *R.* v. *Neville*, 1 B. & Ad. 419; see also sect. 51, subs. 4, p. 138.)

Occupier of unlicensed premises liable for sale without licence.

4. The occupier of any unlicensed premises on which any intoxicating liquor is sold, or if such premises are occupied by more than one person, every occupier thereof, shall, if it be proved that he was privy or consenting to the sale, be subject to the penalties imposed upon persons for the sale of intoxicating liquors without licence.

By an excise act (6 Geo. 4, c. 81, s. 27) the occupier of unlicensed premises where a sale has taken place by a person unknown is made liable for a sale without licence, if privy or consenting thereto.

The Act of 1874 imposes a new penalty on persons found on premises where liquor illicitly stored has been seized. Until the contrary is proved they are to be deemed to have been on such premises for the purpose of illegally dealing in liquor, and are liable to a penalty of 40*s*. Their name and address may be demanded, and if falsely given, a penalty not exceeding 5*l*. is incurred.

Penalty for allowing buyer of liquor to drink on highway, &c., in evasion of licence.

5. If any purchaser of any intoxicating liquor from a person who is not licensed to sell the same to be drunk on the premises drinks such liquor on the premises where the same is sold, or on any highway adjoining or near such premises, the seller of such liquor shall, if it shall appear that such drinking was with his privity or consent, be subject to the following penalties (that is to say) :—

For the first offence he shall be liable to a penalty not exceeding ten pounds:

For the second and any subsequent offence he

shall be liable to a penalty not exceeding twenty pounds.

For the purposes of this section the expression "premises where the same is sold" shall include any premises adjoining or near the premises where the liquor is sold, if belonging to the seller of the liquor or under his control, or used by his permission.

Convictions under this section may be recorded on the licence, if the court think fit, and in any case certain formalities prescribed by sect. 13 of the Act of 1874 (p. 113), must be gone through. As the section originally stood, the conviction was absolutely required to be recorded.

Where the liquor sold was drunk by a customer sitting on a bench placed outside the door of a beer-shop, it was held that the justices were justified in considering that the bench was part of the "premises," and that a conviction under 4 & 5 Will. 4, c. 85, s. 17 (still in force), for selling beer to be drunk on the premises without the licence for that purpose, was right. (*Cross* v. *Watts*, 32 L. J., M. C. 73; 13 C. B., N. S. 239; 11 W. R. 210.) But it was held in *Deal* v. *Schofield* (L. R., 3 Q. B. 8) that drinking on the highway close to the window of a beer-shop did not justify a conviction under 3 & 4 Vict. c. 61, s. 13 (now repealed). The only alteration produced by this section is that the evasive drinking need not be on the licensed premises, but may be on any adjoining premises under the control of the licence holder or on the highway. There must, however, still be evidence of evasion, that is, that at the time of the sale the seller knew that the liquor was to be consumed in one of the specified places.

Penalty for carrying liquor away from premises, in evasion of licence.

6. If any person having a licence to sell intoxicating liquors not to be drunk on the premises, himself takes or carries, or employs or suffers any other person to take or carry, any intoxicating liquor out of or from the premises of such licensed person for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any other house, or in any tent, shed or other building of any kind whatever, belonging to such licensed person, or hired, used or occupied by him, or on or in any place, whether enclosed or not, and whether or not a public thoroughfare, such intoxicating liquor shall be deemed to have been consumed by the purchasers thereof on the premises of such licensed person, with his privity and consent, and such licensed person shall be punished accordingly in manner provided by this act.

Proof of evasion.

In any proceeding under this section it shall not be necessary to prove that the premises or place or places to which such liquor is taken to be drunk belonged to, or were hired, used or occupied by the seller, if proof be given to the satisfaction of the court hearing the case that such liquor was taken to be consumed thereon

or therein with intent to evade the conditions of his licence.

Convictions under this section may be recorded on the licence if the court thinks fit, and in any case the formalities prescribed by s. 13 of the Act of 1874 (p. 113) must be gone through. As the section originally stood, the conviction was absolutely required to be recorded on the licence.

The first paragraph of the section is founded on 4 & 5 Will. 4, c. 85, s. 4 (beer), and 23 Vict. c. 27, s. 5 (wine), the provisions of which it somewhat extends. The third paragraph is founded on sect. 14 of the Wine and Beerhouse Act, 1870. All the three sections are repealed by the present act.

Sale of spirits to children under sixteen.

7. Every holder of a licence who sells or allows any person to sell, to be consumed on the premises, any description of spirits to any person apparently under the age of sixteen years, shall be liable to a penalty not exceeding twenty shillings for the first offence, and not exceeding forty shillings for the second and any subsequent offence.

This section is founded on sect. 43 of the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), which contains similar provisions and is repealed by this act. The test given is not the actual age, but the apparent age, so that if a child appear to be above sixteen, but be proved to be under sixteen, there can be no conviction. Strictly, if the child appear to be below that age and is in fact above, there might be a legal conviction, though it would be a harsh proceeding to convict in such a case.

Sale to be by standard measure.

8. Every person shall sell all intoxicating liquor which is sold by retail and not in cask or bottle, and is not sold in a quantity less than half a pint, in measures marked according to the imperial standards.

Every person who acts or suffers any person under his control or in his employment to act in contravention of this section shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for any subsequent offence twenty pounds, and shall also be liable to forfeit the illegal measure in which the liquor was sold.

By sect. 19 of the Act of 1828, and by sect. 26 of 23 Vict. c. 27 (both repealed by this act), the penalty was for not using standard measures "if required." For the standard measures of capacity, see 5 Geo. 4, c. 74, s. 6. For penalties under the Weights and Measures Acts, see 5 & 6 Will. 4, c. 63, s. 21, which imposes a penalty of 5*l*. See also s. 59 of this act.

Mere proof that the person who acts in contravention of the section is servant of the defendant will not be enough. Some evidence must be given that the servant was "suffered" to do the act, where the defendant did not do it himself.

Making com-

9. Every person who makes or uses, or allows to

be made or used, any internal communication between any licensed premises and any unlicensed premises which are used for public entertainment or resort, or as a refreshment-house, shall be liable to a penalty not exceeding ten pounds for every day during which such communication remains open. munication between licensed premises and house of public resort.

In addition to any penalty imposed by this section any person convicted of an offence under this section shall, if he be the holder of a licence, forfeit such licence.

This section is founded upon sect. 45 of the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), which contains similar provisions (applicable also to premises on which wine is sold by a free vintner), and is still unrepealed.

By sect. 15 of the Act of 1874 (p. 144), if a licence is forfeited by a conviction under this section, the owner of the house may be authorized to carry on the business by means of a transfer.

10. If any licensed person has in his possession on the premises in respect of which his licence is granted, any description of intoxicating liquor which he is not authorized to sell, unless he shall account for the possession of the same to the satisfaction of the court by which he is tried, he shall forfeit such liquor and the vessels containing the same, and shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for any subsequent offence twenty pounds. Penalty on illicit storing of liquor.

A penalty of 50*l.*, with forfeiture of licence, was imposed upon the holder of a beer licence storing wine, spirits, or sweets in a place entered for the storage of beer by 3 & 4 Vict. c. 61, s. 10, repealed by this act.

11. Every licensed person shall cause to be painted or fixed, and shall keep painted or fixed on the premises in respect of which his licence is granted, in a conspicuous place and in such form and manner as the *licensing justices* may from time to time direct, his name, with the addition after the name of the word "licensed," and of words sufficient, in the opinion of the said *justices*, to express the business for which his licence has been granted, and in particular of words expressing whether the licence authorizes the sale of intoxicating liquor to be consumed on or off the premises only, as the case may be; and no person shall have any words or letters on his premises importing that he is authorized as a licensed person to sell any intoxicating liquor which he is not in fact duly authorized to sell. Every person who acts in contravention Descriptive boards to be affixed to premises. Penalty for

not affixing board.

of the provisions of this section shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.

Excise penalty.

This section is framed upon 11 Geo. 4 & 1 Will. 4, c. 64, s. 6, and 4 & 5 Will. 4, c. 85, s. 18, both repealed by this act. The old acts themselves prescribed the form of the descriptive board. It was to be in letters three inches in length, &c. A form is also prescribed by the Excise Act, 6 Geo. 4, c. 81, s. 25, the penalty for not using the form, or for using unauthorized words, being in each case 20*l.*

37 & 38 Vict. c. 49 Licensing justices to settle form of descriptive board.

[Act of 1874, sect. 28. Whereas by section eleven of the principal act it is provided that every licensed person shall cause to be painted or fixed, and shall keep painted or fixed, on the premises in respect of which his licence is granted, in a conspicuous place and in such form and manner as the Commissioners of Inland Revenue may from time to time direct, his name, with such additions as in the said act mentioned: And whereas it is expedient to substitute in the said section the licensing justices for the Commissioners of Inland Revenue: Be it therefore enacted—

That in the said eleventh section the expression "licensing justices" shall be deemed to be substituted for the expression "Commissioners of Inland Revenue," and the word "justices" for the word "Commissioners."]

Act of 1872—*contd.*

Offences against Public Order.

Drunkenness in a public place.

12. Every person found drunk in any highway or other public place, whether a building or not, or on any licensed premises, shall be liable to a penalty not exceeding ten shillings, and on a second conviction within a period of twelve months shall be liable to a penalty not exceeding twenty shillings, and on a third or subsequent conviction within such period of twelve months be liable to a penalty not exceeding forty shillings.

Disorderly drunkenness.

Every person who in any highway or other public place, whether a building or not, is guilty while drunk of riotous or disorderly behaviour, or who is drunk while in charge on any highway or other public place of any carriage, horse, cattle or steam engine, or who is drunk when in possession of any loaded firearms, may be apprehended, and shall be liable to a penalty not exceeding forty shillings, or in the discretion of

the court to imprisonment with or without hard labour for any term not exceeding one month.

Where the court commits any person to prison for nonpayment of any penalty under this section, the court may order him to be imprisoned with hard labour. Hard labour on non-payment of penalty.

It would seem that the public place must be a public place in the same sense as a highway is a public place, so as to include market places, public museums, and perhaps railway stations, but not such places as theatres, open only on payment, nor perhaps omnibuses, although driving along the highway.

The statute of James (21 Jac. 1, c. 7, s. 4), by which mere drunkenness was an offence punishable by a minimum fine of five shillings, upon non-payment of which the offender might be put into the stocks, is repealed by this act. It will be seen that the law now recognizes three forms of drunkenness: (1) drunkenness in a public place or licensed house, for which a penalty of ten shillings is provided by this section; (2) drunkenness in a public place accompanied by disorder, on which a penalty of forty shillings is imposed by this section, by 10 & 11 Vict. c. 89, s. 29 (Town Police Clauses Act), and 23 Vict. c. 27, s. 40 (Refreshment House Act); and (3) drunkenness in licensed premises and refusal to quit, provided for by sect. 18 of the present act, imposing a penalty of 5*l*. A person summoned to answer for one of the offences, of which drunkenness is an ingredient, cannot be convicted of another. (*Martin* v. *Pridgeon*, 1 E. & E. 788; 28 L. J., M. C. 179; followed in *Soden* v. *Cray*, 7 L. T., N. S. 324.) By sect. 51, subs. 4, of the act (p. 138), the defendant and his wife are both competent to give evidence. Statute of James. Present law.

13. If any licensed person permits drunkenness or any violent, quarrelsome or riotous conduct to take place on his premises, or sells any intoxicating liquor to any drunken person, he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds. Permitting drunkenness.

Convictions under this section may be recorded on the licence if the court think fit, and in any case certain formalities prescribed by sect. 13 of the Act of 1874 (p. 113) must be gone through. As the section originally stood, the conviction was required to be recorded, "unless the convicting justices should otherwise direct."

The words "licensed person" include every person holding any of the licences of whatever kind, which it is necessary to obtain from the magistrates. See the interpretation clause, section 74. By sect. 51, subs. 4, of the act (p. 138), the defendant and his wife are both competent to give evidence.

"*Wilfully or knowingly* permitting drunkenness or other disorderly conduct" was the description of the offence against the tenor of the licence granted under the Act of 1828, and also of the excise licence granted under the Beer Acts, which latter licence became void for the first offence against the tenor of it.

Omission of "knowingly."

It is plain that "knowingly" was purposely omitted from this section, it having been contained in the repealed enactment for which the section is substituted. The omission of "knowingly" may have some effect upon the important question whether a conviction of the licensed person might take place upon proof of drunkenness permitted by a servant. See the observations of Archibald, J., in *Mullins* v. *Collins* (43 L. J., M. C. 69), decided on sect. 16, subs. 2. The tendency of the court in that case would seem to be in favour of making the act of the servant equivalent to the act of the master in all matters relating to the management of the licensed premises. A decision on any one section, however, from differences in wording, and in the nature of the offence, is not necessarily conclusive in reference to any other. A reasonable construction of the present section would seem to be that, when knowledge is brought home to the servant but not to the master, the justices may infer from the circumstances under which the servant was left in charge, that the master himself ought to be held responsible. The use of the word "any" instead of "other" avoids all question as to whether the drunkenness must be of a disorderly kind, which was a point raised in *Wray* v. *Toke* (12 Q. B. 508; 17 L. J., M. C. 183). That case also decides that it is not necessary to state, either in the information or conviction, the names of the persons permitted to be drunk, or that they are unknown.

Tippling Act.

By the Tippling Act (24 Geo. 2, c. 40, s. 12) no debt for a sum less than 20*s.* incurred on account of spirits, is recoverable at law. (See *Scott* v. *Gillmore*, 3 Taunt. 226.) By 25 & 26 Vict. c. 38, the above act is repealed "so far only as relates to spirituous liquors sold to be consumed elsewhere than on the premises where sold, and delivered at the residence of the purchaser thereof in quantities not less at any one time than a reputed quart." So that the price of spirits drunk on the spot where sold or sent to the purchaser's house in less quantities than a quart cannot be recovered, while quantities greater than a quart sold not to be drunk on the premises are subject to the ordinary laws of contract.

No debt of any amount incurred for beer or cider, consumed on the premises where sold, is recoverable at law. (County Court Act, 1867, 30 & 31 Vict. c. 142). The price of liquor sold to a drunken person cannot be recovered in any case. (*Brandon* v. *Old*, 3 C. & P. 440.)

Harbouring prostitutes.

14. If any licensed person knowingly permits his premises to be the habitual resort of or place of meeting of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution, he shall, if he allow them to remain thereon longer than is necessary for the purpose of obtaining reasonable refreshment, be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.

Convictions under this section may be recorded on the licence, if the court thinks fit, and in any case certain formalities prescribed by sect. 13 of the Act of 1874 (p. 113), must be gone through. As the section originally stood, the conviction was

required to be recorded, "unless the convicting justices should otherwise direct."

The offence under this section seems to be somewhat different from that under the Town Police Clauses Act (10 & 11 Vict. c. 89, s. 35), which enacts, that "every person keeping any place of public resort, who knowingly suffers common prostitutes or reputed thieves to assemble at and continue in his premises, shall be liable to a penalty not exceeding five pounds," within the meaning of which the holder of a public-house licence has been held to be included. (*Cole* v. *Coulton*, 2 E. & E. 695; 29 L. J., M. C. 125.) The word "reputed," as applied to prostitutes, is new; and the expression "habitual resort" would seem to require a greater amount of evidence to support a conviction than "assemble and continue." Town Police Clauses Act.

It had been held before the act, that there was no offence if the prostitutes remained no longer than to take refreshments (*Greig* v. *Bendeno*, E. B. & E. 133; 27 L. J., M. C. 294; *Purkis* v. *Huxtable*, 1 E. & E. 780; 28 L. J., M. C. 221), but also that they must be on the premises for the purposes of prostitution (*Belasco* v. *Hannant*, 3 B. & S. 13; 31 L. J., M. C. 225), which under this section is not necessary. It is clear that before the act it was not necessary for the informant to negative the exception as to reasonable refreshment in the information, because it is enough to follow the words of the statute. It was necessary however in showing an "assembling," practically to negative the exception in the proof. But as the obtaining of reasonable refreshment is now an express exception under the act, it is for the defendant to prove it, as provided by sect. 51, subs. 4. Saving for refreshment.

Under 34 & 35 Vict. c. 112, s. 10 (Prevention of Crime Act, 1871), the licence holder convicted of knowingly harbouring thieves or reputed thieves may be adjudged to forfeit his licence; upon a second conviction the licence is forfeited *ipso facto*, and the offender disqualified for two years; and upon two convictions within three years in respect of the same premises, whether the offender be the same person or not, the premises are to be adjudged disqualified for one year. There is also a penalty of 10*l.* or four months' imprisonment, and the offender may be called upon to find sureties in 20*l.* It has been held that where the licence holder allowed a meeting to be held for the purpose of assisting the family of a man charged with an offence, at which meeting several thieves known to the licence holder to be such were present, the licence holder was guilty of harbouring thieves, although no disorderly conduct occurred and the meeting was not held in pursuance of any unlawful purpose. (*Marshall* v. *Fox*, L. R., 6 Q. B. 370.) Harbouring thieves.

15. If any licensed person is convicted of permitting his premises to be a brothel, he shall be liable to a penalty not exceeding twenty pounds, and shall forfeit his licence, and he shall be disqualified for ever from holding any licence for the sale of intoxicating liquors. Permitting premises to be a brothel.

The keeping of a brothel is indictable at common law; the prosecution of the offence is encouraged by 25 Geo. 2, c. 36, which enacts (s. 5) that such prosecution may be instituted at the parish expense by any two inhabitant ratepayers of a parish, who, in event of obtaining a conviction, are to be paid the sum

of ten pounds each. A person may be convicted of keeping a brothel, although there be no evidence that any indecent or disorderly conduct is perceptible from the exterior of the house. (*R.* v. *Rice*, L. R., 1 C. C. R. 21; 35 L. J., M. C. 13.).

Whether summary conviction for keeping brothel.

Whether the keeping of a brothel by a licence holder is an "offence under this act" within the meaning of sect. 51, so as to make it punishable on summary conviction, is a question of considerable doubt. Keeping a brothel was not an offence against the tenor of the licence under the Act of 1828, but was left to the ordinary indictment at sessions; so that the offence is now made punishable on summary conviction for the first time if at all. It is a well established rule that a right to trial by jury cannot be taken away except by express words or necessary implication. (*Looker* v. *Halcombe*, 4 Bing. 183, per Best, C. J.) The use of the term "convicted," moreover, seems to indicate that the intention of the section is not to enact an offence, but to add a special penalty to an offence already existing. On the other hand, the offence is called "permitting premises to be a brothel," which definition varies from that of the indictable offence of "keeping a brothel." On the whole there seems sufficient want of clearness in taking away trial by jury to make the rule in favour of the maintenance of the right applicable, so that the conviction must take place at assizes or quarter sessions. At common law the fine is unlimited, but this section reduces it in the case of a licence holder to twenty pounds at the most, while on the other hand it forfeits the licence.

Penalty for harbouring constable.

16. If any licensed person—

(1.) Knowingly harbours or knowingly suffers to remain on his premises any constable during any part of the time appointed for such constable being on duty, unless for the purpose of keeping or restoring order or in execution of his duty; or

(2.) Supplies any liquor or refreshment, whether by way of gift or sale, to any constable on duty unless by authority of some superior officer of such constable; or

(3.) Bribes or attempts to bribe any constable,

he shall be liable to a penalty not exceeding, for the first offence ten pounds, and not exceeding for the second or any subsequent offence twenty pounds.

Convictions under this section may be recorded on the licence, if the court thinks fit, and in any case certain formalities prescribed by sect. 13 of the Act of 1874 (p. 113), must be gone through. As the section originally stood, the conviction was required to be recorded on the licence, "unless the convicting justices should otherwise direct."

Clause (1) of this section is similar to sect. 34 of the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), which contains similar provisions (applicable only to houses licensed for the sale of liquor to be drunk on the premises) and is still unrepealed. Clauses (2) and (3) are new. As to the exceptions, see sect. 51, subs. 4, and note.

Under subs. 2 a licensed person is liable for the supply of liquor to the constable by his servant, in the absence and without the authority of his master. (*Mullins* v. *Collins*, 43 L. J., M. C. 67; 29 L. T., N. S. 838; 22 W. R. 297.)

17. If any licensed person—

(1.) Suffers any gaming or any unlawful game to be carried on on his premises; or — Permitting gaming or unlawful games.

(2.) Opens, keeps, or uses, or suffers his house to be opened, kept, or used in contravention of the act of the session of the sixteenth and seventeenth years of the reign of her present Majesty, chapter one hundred and nineteen, intituled "An Act for the Suppression of Betting Houses,"

he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds.

Convictions under this section may be recorded on the licence, if the court thinks fit, and in any case the formalities prescribed by sect. 13 of the Act of 1874 (p. 113) must be gone through. As the section originally stood, the conviction was required to be recorded on the licence, "unless the convicting justices should otherwise direct."

Gaming is "playing at any game for money or money's worth." (*R.* v. *Ashton*, 22 L. J., M. C. 1; 1 E. & B. 286; *Patten* v. *Rhymer*, 29 L. J., M. C. 189; *Danford* v. *Taylor*, 20 L. T., N. S. 483.) A licence holder may not allow private friends of his own to play cards in the licensed premises for money (*Patten* v. *Rhymer*). — Gaming.

Unlawful games are games in themselves unlawful, being so declared by statute, whether played for money or not, such as dicing, cockfighting (33 Hen. 8, c. 9, s. 11; Dalton, c. 46), lotteries (10 & 11 Will. 3, c. 17), ace of hearts, pharaoh, basset and hazard (12 Geo. 2, c. 28, s. 2), any game played with dice or with any instrument in the nature of dice, backgammon excepted (13 Geo. 2, c. 19), and roulet (18 Geo. 2, c. 24). Badger-baiting, dog-fighting, or any other game involving cruelty to animals, is also unlawful (12 & 13 Vict. c. 92). No game of mere skill is an unlawful game (8 & 9 Vict. c. 109, s. 1). Neither dominoes, chess nor draughts are unlawful games. (*R.* v. *Ashton*, *supra*.) See also Brandt on "Games," p. 108. — Unlawful games.

Section 1 of the Betting Houses Act (16 & 17 Vict. c. 119) is in the following terms: "No house, office, room, or other place shall be opened, kept or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier or keeper, or person using the same, or of any person having the care or management in any manner conducting the business thereof betting with persons resorting thereto; or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper or person as aforesaid, as or for the consideration for any assurance, undertaking, promise, or agreement, expressed or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relat- — Betting Houses Act.

ing to any horse race or other race, fight, game, sport or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid; and every house, office, room or other place opened, kept or used for the purposes aforesaid or any of them, is hereby declared to be a common nuisance and contrary to law."

Billiards.

Billiards are a lawful game, but the keeper of a public billiard table requires to be licensed, unless he holds the public-house licence, in which case he is specially exempted from the obligation to take out a licence under 8 & 9 Vict. c. 109, s. 11. The holders of the other licences if they should permit billiard playing without being licensed, would be liable to the penalties under 8 & 9 Vict. c. 109, and not to the penalties of this section as billiards are not *per se* an unlawful game. With the exception of holders of the public-house licence, the seller of exciseable liquors cannot keep a billiard-table upon his licensed premises, because allowing the consumption of those liquors is against the tenor of the billiard licence (8 & 9 Vict. c. 109, sched.) Beer and sweets, however, are no longer exciseable liquors, so that the seller of them may keep a billiard table if he obtains the billiard licence from the magistrates. (*Jones* v. *Whitaker*, L. R., 5 Q. B. 541; 39 L. J., M. C. 139.) Offences against the tenor of a billiard licence are by section 75 of this act made punishable as offences under this section.

Power to exclude drunken persons from licensed premises.

18. Any licensed person may refuse to admit to and may turn out of the premises in respect of which his licence is granted any person who is drunken, violent, quarrelsome, or disorderly, and any person whose presence on his premises would subject him to a penalty under this act.

Any such person who upon being requested in pursuance of this section by such licensed person, or his agent or servant, or any constable, to quit such premises, refuses or fails so to do, shall be liable to a penalty not exceeding five pounds, and all constables are required on the demand of such licensed person, agent, or servant, to expel or assist in expelling every such person from such premises, and may use such force as may be required for that purpose.

The court committing any person to prison for non-payment of any penalty under this section may order him to be imprisoned with hard labour.

At common law the public has the right of entry into public-houses, and similar places of entertainment, for the purpose of obtaining reasonable refreshment (*Six Carpenters' case*, 6 Rep.; 1 Sm. L. C.); but it would seem that the proprietor has the right to exclude or turn out any person who is drunk or otherwise infringing the law, or even demanding unreasonable accommodation. (*Fell* v. *Knight*, 8 M. & W. 269.)

The persons whose presence would subject the licence holder to a penalty are prostitutes (s. 14), constables, except in execu-

tion of their duty (s. 16), and persons gaming, playing unlawful games or betting (s. 17).

[19—21.—*Special penalties for adulteration by "Cocculus Indicus, chloride of sodium otherwise common salt, copperas, opium, Indian hemp, strychnine, tobacco, darnel seed, extract of logwood, salts of zinc or lead, alum" and other "deleterious ingredients." Provisions for analysis. Repealed, Licensing Act,* 1874, *s.* 33. *See now sect.* 14 *of that act.*]

[Act of 1874, s. 14. Where a licensed person is convicted of any offence against the provisions of any act for the time being in force relating to the adulteration of drink, such conviction shall be entered in the proper register of licences, and may be directed to be recorded on the licence of the offender in the same manner as if the conviction were for an offence against this act, and when so recorded shall have effect as if it had been a conviction for an offence against this act.] 37 & 38 Vict. c. 49. Record upon licence of conviction for adulteration.

The elaborate and severe provisions of the Act of 1872 with reference to adulteration, were, it is believed, repealed in consequence of no conviction having been obtained under them. They are now replaced by the present section of the Act of 1874, the result being to place licensed persons in the same position as other tradesmen, except as to the recording of the conviction and as to excise penalties.

For the procedure as to recording and its effect, see sect. 13 of the Act of 1874, p. 113, and sect. 30 of the Act of 1872, p. 114.

The adulteration of liquors is indictable at common law (4 Steph. Black., 5th ed., p. 349; Chitty's Criminal Law, vol. 2, p. 556, citing 2 East, P. C. 821). It is also actionable (Roll. Ab. 95). Other penalties on adulteration.

The general adulteration acts now in force, relating both to food and drink, are 23 & 24 Vict. c. 84 (Adulteration Act, 1860), and 35 & 36 Vict. c. 74 (Adulteration Act, 1872). By sect. 1 of the Act of 1860, "every person who shall sell any article of food or drink with which, to the knowledge of such person, any ingredient or material injurious to the health of persons eating or drinking such article has been mixed, and every person who shall sell as pure and unadulterated any article of food or drink which is adulterated or not pure," shall upon a first conviction pay a penalty not exceeding 5*l.*, and upon a second conviction be liable to have his name, place of abode and offence published at his own expense, "in such newspaper or in such other manner" as to the convicting justices shall seem desirable. The act confers power upon various local authorities to appoint analysts and to pay them a salary (s. 3), makes the certificates of such analysts *primâ facie* evidence (s. 4), and gives the usual appeal to quarter sessions (s. 6). By sect. 13 it is enacted, that "nothing in this act contained shall be held to affect the power of proceeding by indictment, or to take away any other remedy against any offender under this act." And by sect. 14, that the act shall not be construed "so as to affect the ordinary Adulteration Act, 1860.

reduction of the strength of foreign, British or colonial spirits by persons licensed and paying duties under the excise."

Adulteration Act, 1872.

The Adulteration Act of 1872 is more stringent, and makes the penalty for mixing "with any article of food or drink any injurious or poisonous ingredient or material to adulterate the same for sale" 50*l.* for the first offence, and six months' imprisonment with hard labour for the second (s. 1). By sect. 2, the seller of adulterated food or drink may be fined 20*l.*; and by sect. 3 any person selling "any article of food or drink knowing the same to have been mixed with any other substance with intent fraudulently to increase its weight or bulk, and who shall not declare such admixture to a purchaser," is to be deemed to have sold an adulterated article. By sect. 4, the Act of 1860, given above, is incorporated in the new act. By sect. 5 certain local authorities may, and, when required by the local government board, shall, for their respective districts appoint persons possessing "competent medical, chemical and microscopical knowledge" as analysts. By sect. 6 inspectors of nuisances, &c., are directed to procure samples of suspected articles and to lay informations. By sect. 12 "nothing in the act contained is to be held to affect the power of proceeding by indictment or to take away any other remedy against any offender under the act."

Appointment of analysts.

Decisions under Adulteration Act, 1872.

In *Fitzpatrick* v. *Kelly* (42 L. J., M. C. 132), it was held that it is not necessary under sects. 2 and 3, to prove a guilty knowledge in the seller, or that he expressly declared the article sold to be unadulterated; and in *Roberts* v. *Egerton* (30 L. T., N. S. 633), that it was no defence that the retailer had procured from the wholesale merchant and delivered to his customer an article adulterated only in a manner usual in the trade, and not injurious to health. But if an article be a compound of different substances, or require some foreign ingredient to make it lasting, *e. g.*, curaçoa, which is known to be a mixture, or sherry, which requires alcohol to make it fit for carriage; then merely to call the article by its received name would not be to represent an adulterated article as unadulterated. (See per Blackburn, J., in *Roberts* v. *Egerton, ubi sup.*) The requirement of sect. 3, to "declare such admixture" is satified by a declaration of the fact, and does not necessitate a statement by the seller of the nature or proportion of the ingredients. (*Pope* v. *Tearle*, 30 L. T., N. S. 789.)

Excise penalties.

By sect. 2 of 56 Geo. 3, c. 58 (an excise act), the adulteration of beer with molasses, honey, liquorice, vitriol, quassia, cocculus Indiæ, grains of paradise or opium, or any article or preparation whatsoever as a substitute for malt or hops, is punishable by a penalty of 200*l.*, which penalty, by sect. 4, is made recoverable by action at the suit of a common informer as well as at the suit of the excise authorities. By 10 Vict. c. 5, sugar may be used in brewing, and by 25 Vict. c. 22, s. 20, so much of 56 Geo. 3, c. 58, as imposes a penalty for using any article as a substitute for hops, is repealed. In *Att.-Gen.* v. *Lockwood* (9 M. & W. 378) the act 56 Geo. 3, c. 58, was held to be still in force, notwithstanding subsequent provisions in the beer acts on the same subject, and is conceived to be unaffected by the Licensing Acts, 1872, and 1874. (See sect. 59, p. 145, and sect. 72, subs. 10, p. 151 of the Act of 1872, and sect. 1 of the Act of 1874, p. 80.)

Closing Licensed Premises in case of Riot.

23. Any two justices of the peace acting for any county or place where any riot or tumult happens or is expected to happen may order every licensed person in or near the place where such riot or tumult happens or is expected to happen to close his premises during any time which the justices may order; and any person who keeps open his premises for the sale of intoxicating liquors during any time at which the justices have ordered them to be closed shall be liable to a penalty not exceeding fifty pounds; and it shall be lawful for any person acting by order of any justices to use such force as may be necessary for the purpose of closing such premises.

Closing in case of riot.

Penalty for not closing as ordered.

By the Act of 1828, s. 20, repealed by this act, when any riot happens, or is expected to happen, two justices might close any house licensed under that act. With regard to beer-houses, two justices, when the riot is expected to happen, and one when it was actually happening, had the same power. (1 Will. 4, c. 64, s. 11, repealed.) The present act introduces uniformity in all cases.

24. *Hours of closing. Penalty for sale in closing hours. Exception for travellers. Order of justices for alteration of hours. Repealed, Act of* 1874, *s.* 33.

Hours of Closing.

[Act of 1874, s. 3. All premises in which intoxicating liquors are sold by retail shall be closed as follows; (that is to say,)

37 & 38 Vict. c. 49. Hours of closing.

(1.) If situate within the metropolitan district,— Metropolitan district.

(*a*) On Saturday night from midnight until one o'clock in the afternoon on the following Sunday; and

(*b*) On Sunday night from eleven o'clock until five o'clock on the following morning; and

(*c*) On all other days from half an hour after midnight until five o'clock on the same morning; and

(2.) If situate beyond the metropolitan district and in the metropolitan police district or in a town or in a populous place as defined by this act,— Metropolitan police district, "towns and populous places."

(*a*) On Saturday night from eleven o'clock until half an hour after noon on the following Sunday; and

(*b*) On Sunday night from ten o'clock

until six o'clock on the following morning; and

(*c*) On the nights of all other days from eleven o'clock until six o'clock on the following morning; and

Elsewhere.

(3.) If situate elsewhere than in the metropolitan district or the metropolitan police district or such town or populous place as aforesaid,—

(*a*) On Saturday night from ten o'clock until half an hour after noon on the following Sunday; and

(*b*) On Sunday night from ten o'clock until six o'clock on the following morning; and

(*c*) On the nights of all other days from ten o'clock until six o'clock on the following morning.

Sunday afternoon.

Such premises wherever situate shall, save as hereinafter mentioned, be closed on Sunday afternoon from three or half-past two according as the hour of opening shall be one o'clock in the afternoon or half an hour after noon until six o'clock.

Christmas Day, &c.

Such premises wherever situate shall be closed on Christmas Day and Good Friday and on the days preceding Christmas Day and Good Friday respectively, as if Christmas Day and Good Friday were respectively Sunday, and the preceding days were respectively Saturday, but this provision shall not alter the hours during which such premises shall be closed on Sunday when Christmas Day immediately precedes or succeeds Sunday.

All previous closing enactments are entirely repealed by the Act of 1872, except 11 & 12 Vict. c. 49, regulating Sunday morning closing hours, which is repealed so far only as it relates to England, and the Public House Closing Acts of 1864 and 1865, which are left in force so far as they relate to refreshment-houses in which intoxicating liquors are not sold.

Under this section the whole country is divided into three divisions for closing purposes, the first being the metropolitan district, the second being such places as are considered of an urban character, and the third of such places as are considered of a rural character.

Metropolitan district.

The interpretation clause (p. 158) defines metropolitan district as the "area in that behalf mentioned in the schedule." The schedule is in the following terms: "Metropolitan district—the city of London or the liberties thereof, or any parish or place for the time being subject to the jurisdiction of the Metropolitan Board of Works, or within the area contained within a circle, the radius of which is four miles from Charing Cross." The schedule is somewhat inartistically drawn, and may give rise to a question of extensive application. The interpretation clause

refers to the "area mentioned in the schedule," but the schedule mentions not one area but several, and that in the alternative. The schedule appears in fact to have been framed without any reference to the interpretation clause, which gives it validity, but to have been extracted bodily from the repealed 24th section of the Act of 1872, where the grammatical construction of the extracted words depends on the term "premises" and not "area." If it be considered imperative to look upon the schedule as defining an area, it will be necessary to read "and" for "or" in the two first instances in which it occurs. In that case the most comprehensive definition of boundaries will be "any parish or place within the area contained within a circle, the radius of which is four miles from Charing Cross;" so that if a place is touched by the circumference of the circle, all the houses within the place will be closed according to metropolitan hours, although many of the houses lie outside the four mile radius. As, however, the schedule fails to carry out the design of the interpretation clause, the proper legal construction would seem to be to leave the interpretation clause out of view, and to read the schedule as if inserted in the enacting clause itself. It will then run thus: "All premises in which intoxicating liquors are sold by retail, if situate within the city of London or the liberties thereof, or any parish or place for the time being subject to the jurisdiction of the Metropolitan Board of Works, or within the area contained within a circle, the radius of which is four miles from Charing Cross, shall be closed." If there be a parish within the jurisdiction of the Metropolitan Board of Works, but outside the four-mile radius, it will be subject to the hours of the "metropolitan district." The parishes subject to the jurisdiction of the Metropolitan Board are enumerated in the schedules to 18 & 19 Vict. c. 120. If an addition to the jurisdiction of the Board is made by Order in Council under sect. 249 of that act, the parish so added will form part of the "metropolitan district" by reason of the words "for the time being." The four mile radius from Charing Cross is already employed as a measure of distance in, among other instances, the Hackney Carriages Acts (see 16 & 17 Vict. c. 127, s. 13), but no definite rule of measurement has been laid down. In *Mouflet* v. *Cole* (42 L. J., Ex. 8), the Court of Exchequer Chamber laid down that, unless the contrary is expressed, distances, whether occurring in contracts or statutes, must be measured in a straight line on the map, and when a house is the terminus the nearest point of the house is to be taken.

Metropolitan police district.

The second scale of hours of closing is appointed for houses "situate beyond the metropolitan district and in the metropolitan police district, or in a town, or in a populous place as defined by the act." The places constituting the metropolitan police district are enumerated in the schedule to 10 Geo. 4, c. 44. By s. 34 of that act and by s. 2 of 2 & 3 Vict. c. 47, the Queen in Council may within certain limits add to the district. Town is defined by this act (p. 158) as "an urban sanitary district, as described for the purposes of the Public Health Act, 1872," and it is added, "any collection of houses adjacent to a town as so defined shall be deemed to be part of such town after it has been declared so to be by an order of the county licensing committee having jurisdiction in the place where such houses are situated: provided that no urban sanitary district, whether including such adjacent houses or not, shall be deemed a town unless it contains one

"Town."

thousand inhabitants." By the Public Health Act, 1872 (35 & 36 Vict. c. 79), s. 4, urban sanitary districts are constituted in "boroughs constituted either before or after that act," "Improvement Act districts constituted before that act" and "local government districts constituted before or after that act." Improvement Act districts are places for which local statutes have been passed for the purpose of appointing improvement commissioners or otherwise regulating the management of the place. Local Government Act districts are places in which the various statutes known as the Local Government Acts have been adopted. A machinery is provided by 21 & 22 Vict. c. 98, s. 16 for ascertaining the boundary of such places when they have no defined area. Under the power to add any "collection of houses adjacent to a town" to its area for closing purposes, it would seem that the county licensing committee have full discretion to order that any collection whatever of houses, whether constituting a parish, a hamlet, a township, or having no conventional name, shall form part of the town for closing purposes, so long as they are adjacent to the town in question. There seems, further, no reason why the order should not, if thought fit, apply to a portion only of a parish or hamlet. Whether or not the collection of houses is adjacent to the town is a question of fact for the committee, and the order would apparently be good although the houses were at some distance from the town, except where the distance is so great that it could be said there was no legal evidence of the houses being adjacent. On the other hand, however close to a town houses may be they cannot be considered for closing purposes part of it, if the committee refuse to make an order to that effect, for the order is a condition precedent to the alteration in the status of the houses. The definition of "populous place" in the interpretation clause (p. 158) seems to assume that there are certain cases in which it is "incumbent" on the licensing committee to make orders, but the word is probably loosely used, and there is nothing elsewhere in the act to impose any obligation on the committee to make an order in any case.

Collection of houses.

"Populous place."

What places shall be considered "populous places" seems also entirely in the discretion of the licensing committee, so long only as the place contains one thousand inhabitants. The interpretation clause defines "populous place" as "any area with a population of not less than one thousand, which by reason of the density of such population the county licensing committee may by order determine to be a populous place." Sect. 65 of the Licensing Act, 1872, which is to be read with this act, requires the population of any area to be ascertained according to the last published census for the time being. An order declaring a place to be "populous," although it had in fact according to the census less than one thousand inhabitants would be a nullity. And as the licensing committee have the distinct principle of density of population laid down for their guidance, if a place were to be declared "populous" in which the houses were so scattered that it could be said there was no evidence of density of population the order might, it would seem, be brought up on certiorari and quashed. The same observation as in the case of adding adjacent houses to a town applies to the order declaring a place populous, and there is no obligation on the committee so to declare it, however populous a place may be in fact. A duty, however, is imposed upon the committee to consider the question

as soon as may be after the passing of the act, and also on the publication of each census. It should be observed that this peculiar jurisdiction over closing hours is vested in the county licensing committee, and that the borough magistrates are not concerned with it.

Saturday closing.

The Saturday closing hour is the same as on other week days except in the metropolitan district, where it is half an hour earlier. The complicated provision for closing on Christmas Eve and Maunday Thursday consequently affects the metropolitan district only.

The same loose drafting as appeared in sect. 24 of the Act of 1872 reappears in the present section. The offence committed on one day is not closing on the "following" day. It appears, however, to be unnecessary to state in the conviction the precise day on which the offence was committed, so long as it is alleged that the offence took place within certain days. See Paley on Convictions, 5th ed. p. 190.

Power to justices to vary Sunday afternoon closing hours.

Sect. 6. Notwithstanding anything in this or in any local act contained, the licensing justices may, if they think fit, as respects premises in which intoxicating liquors are sold, when situate in any place beyond the metropolitan district, for the purpose of accommodating the hours of closing on Sunday, Good Friday, and Christmas-day to the hours of public worship in such place, by order direct that such premises shall remain closed until one o'clock in the afternoon instead of half an hour after noon, and in that case such premises shall be closed in the afternoon from three until six o'clock, instead of from half-past two until six o'clock.

Advertisement.

Any order made by the licensing justices under this section shall not come into operation until the expiration of one month after the date thereof, and shall be advertised in such manner as the licensing justices direct, and shall be in force until the same is revoked; the expense of any such advertisement may be defrayed in like manner as the expenses of advertising the sittings of such justices are defrayed.

An order of closing under this section would seem to take effect as matter of law, from the use of the words "shall be in force until the same is revoked," and of the words "closed in pursuance of this act" in sect. 19. So that it would not be necessary to prove that a defendant knew of the change as a matter of fact. For the definition of "licensing justices," see sect. 74 of the principal act. No time is assigned by the statute for the making the order.

Penalty for selling in closing hours.

Sect. 9. Any person who—

During the time at which premises for the sale of intoxicating liquors are directed to be closed by or in pursuance of this Act, sells or exposes for sale in such premises any intoxicating liquor, or opens or keeps open such pre-

mises for the sale of intoxicating liquors, or allows any intoxicating liquors although purchased before the hours of closing to be consumed in such premises,—

shall for the first offence be liable to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds.

A conviction under this section may be recorded on the licence. See s. 73, p. 113.

The three branches of the offence against the laws of closing defined by this section are—(1) selling or exposing for sale; (2) opening or keeping open for sale, and (3) allowing liquor, although purchased before closing hours, to be consumed. The third branch is a material modification of the corresponding offence in the now repealed 24th section of the principal act. That act made it an offence to allow liquor to be consumed on licensed premises during closing hours, a phrase which had occurred in previous closing enactments. See 3 & 4 Vict. c. 61, s. 15, where the phrase was not used in the penal clause, and on the construction of which *Petherick* v. *Sargent* (6 L. T., N. S. 48), is an authority, Act of 1869, s. 15, and 33 & 34 Vict. c. 6, which excepts "inmates" from the effect of the preceding enactment. The Act of 1872 would, if strictly applied, have made it penal even if an inmate had consumed the liquor.

Allowing consumption of liquor.

The only consumption of liquor entailing a penalty under this section is that by a man who purchased the liquor before closing hours and drinks it after. This provision was intended to get rid of the decision in *Cates* v. *South* (1 L. T., N. S. 365), that a reasonable time might be allowed to customers to consume liquor bought before closing hours. As the law now stands, the licensed person must clear his house as the clock strikes, and he would be justified in refusing to serve customers who apply for liquor too late to allow them to consume it before the closing hour. The offence of consuming after closing hours liquors bought before would seem not to be committed when a lodger in the house entertains his friends. The 10th sect. of the Act of 1874 (*infra*) exempts all sales to lodgers, and it would not be a reasonable interpretation of this section to make it legal for a lodger to entertain his friends with liquors purchased after closing hours, and illegal if they should be purchased before.

Saving as to *bonâ fide* travellers and lodgers.

Sect. 10. Nothing in this act or in the principal act contained shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor at any time to *bonâ fide* travellers or to persons lodging in his house: provided, that no person holding a six-day licence shall sell any intoxicating liquor on Sunday to any person whatever not lodging in his house.

Railway travellers.

Nothing in this act contained as to hours of closing shall preclude the sale at any time, at a railway station, of intoxicating liquors to persons arriving at or departing from such station by railroad.

If in the course of any proceedings which may be

taken against any licensed person for infringing the provisions of this act or the principal act, relating to closing, such person (in this section referred to as the defendant) fails to prove that the person to whom the intoxicating liquor was sold (in this section referred to as the purchaser) is a *bonâ fide* traveller, but the justices are satisfied that the defendant truly believed that the purchaser was a *bonâ fide* traveller, and further that the defendant took all reasonable precautions to ascertain whether or not the purchaser was such a traveller, the justices shall dismiss the case as against the defendant, and if they think that the purchaser falsely represented himself to be a *bonâ fide* traveller, it shall be lawful for the justices to direct proceedings to be instituted against such purchaser under the twenty-fifth section of the principal act.

Prosecution for falsely pretending to be traveller.

A person for the purposes of this act and the principal act shall not be deemed to be a *bonâ fide* traveller unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare.]

Travellers: Burden of proof.

It had been clearly laid down in the cases decided before the Act of 1872, that the burden of proof lay on the informer to show not only that the buyer of the liquor was not a traveller, but that the seller intended to sell to a person who was not a traveller (*Taylor* v. *Humphries* (No. 1), 10 C. B., N. S. 489; 9 W. R. 705; 4 L. T., N. S. 514; 7 Jur., N. S. 1288; 30 L. J., M. C. 242; *Taylor* v. *Humphries* (No. 2), 17 C. B., N. S.; 34 L. J., M. C. 1; 11 L. T., N. S. 376; *Peache* v. *Colman*, L. R., 1 C. P. 324; 35 L. J., M. C. 118; *Morgan* v. *Hedger*, L. R., 5 C. P. 485; *Copley* v. *Burton*, L. R., 5 C. P. 489; 39 L. J., M. C. 141.) It had also been held that the provision in favour of the traveller is not such "an exemption, exception, proviso or condition" within sect. 14 of 11 & 12 Vict. c. 43 (Jervis's Act) as to throw the burden of proof on the person taking advantage of it. (*Davies* v. *Scrace*, L. R., 4 C. P. 172; 38 L. J., M. C. 79.) The reasons for excluding the operation of Jervis's Act are well and fully stated by Montague Smith, J., in that case. The decision to the contrary in *Tennant* v. *Cumberland* (5 Jur., N. S. 763) must be considered to have been overruled. (*Davies* v. *Scrace*, *ib.*) Notwithstanding these decisions, and notwithstanding that the Act of 1872 does not apparently in terms throw any greater burden of positive proof on the defendant than Jervis's Act, it was held in *Roberts* v. *Humphreys* (L. R., 8 Q. B. 483; 42 L. J., M. C. 147; 29 L. T., N. S. 387; 21 W. R. 885), that sect. 51, subs. 4 of that act shifted the burden of proof from the informer to the defendant. The third paragraph of the present section of the Act of 1874 affirms the law as laid down on this point in *Roberts* v. *Humphreys*.

It is a question of fact for the justices in each case to decide whether the person supplied with liquor is a traveller or not. (*Atkinson* v. *Sellers*, 5 C. B., N. S. 442; 28 L. J., M. C. 12.)

The travelling need not be on business, but may be merely for pleasure. (*Atkinson* v. *Sellers*, *ib.*; *Taylor* v. *Humphries*, *sup.* See especially the considered judgment of Erle, C. J., in *Taylor* v. *Humphries* (No. 2).) In the first case, a large party had driven a round of eight miles from Liverpool; in the second three persons had walked four miles from Birmingham; in both cases for pleasure only, and they were held to be travellers. The Act of 1874 adds a new qualification to the character of traveller, in requiring him to be three miles from the place where he lodged during the preceding night. Before that act the distance travelled was merely an element for the consideration of the justices in determining whether or not he was *bonâ fide* a traveller; and in *Peplow* v. *Richardson* (L. R., 4 Q. B. 168), it was held that they might fairly decide in his favour when he had walked only two miles and a half. The three mile qualification does not apply to the sale of liquors at a railway station to passengers.

Railway travellers.

The special exception in favour of railway travellers was contained in 27 & 28 Vict. c. 64, s. 10 (The Public House Closing Act, 1864). The exception is now extended to the hours of closing on Sundays. It had been already held, that a person who had taken a railway ticket on Sunday was a traveller within the meaning of the old acts. (*Fisher* v. *Howard*, 34 L. J., M. C. 42; see also *Peache* v. *Colman*, L. R., 1 C. P. 324; 35 L. J., M. C. 118.)

Bonâ fide.

The expression "*bonâ fide* traveller" occurred in 17 & 18 Vict. c. 79, s. 1, repealed by 18 & 19 Vict. c. 118, which re-enacted the clause without the words *bonâ fide* and is now itself repealed, and also in the schedule of 16 & 17 Vict. c. 67 (The Forbes Mackenzie Act), repealed by 25 & 26 Vict. c. 35, s. 2. The apparently designed omission of "*bonâ fide*" in 18 & 19 Vict. c. 118, was commented on in *Atkinson* v. *Sellers*; but the court appeared to think that it made no difference. (*Per* Williams, J., 28 L. J., M. C. 13.) The words seem intended merely to point the distinction between those who travel to drink, and those who drink to travel. (See the remarks of Cockburn, C. J., in *Atkinson* v. *Sellers*, 5 C. B., N. S. 442.)

It must be observed that this section does not supply an exhaustive definition of a bonâ fide traveller. "A person *shall not be deemed* to be a bonâ fide traveller unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands to be supplied with liquor," are words which require as a sine quâ non that the traveller shall have travelled three miles during the day, but do not affect the question of his bona fides. It does not follow because a man is not a bonâ fide traveller unless he has travelled three miles, that if he has travelled three miles he is therefore a bonâ fide traveller. Any other construction would obviously lay the law open to easy evasion. If, therefore, as was suggested by Montague Smith, J., in *Peplow* v. *Richardson* (*supra*), the person supplied has travelled three miles, but "his primary object is tippling, and the refreshment is not merely ancillary to a lawful purpose," he will not be a bonâ fide traveller within the section.

The difficulty experienced in *Roberts* v. *Humphreys* (*supra*) as to whether the licence holder ought to be convicted if he believed the person supplied to be a bonâ fide traveller, although he did not in fact answer that character, is cleared up in this

section by express words. If the justices are satisfied of the defendant's belief he is to be acquitted, even though the person supplied may not satisfy the first requirement of having travelled three miles. Unless, however, the defendant asked the person supplied whether he had travelled three miles and received an untrue answer, or there were circumstances making such a question unnecessary, it would seem difficult for the licence holder to satisfy the justices of the innocence of his belief in a case in which the person supplied had not in fact travelled three miles. On the other hand, the licensed person cannot always rely merely on a satisfactory answer to the question whether the customer has travelled three miles. If there are any circumstances in the arrival of the customer which show that his primary object is to obtain liquor during closing hours, the licence holder is liable to be convicted.

Act of 1872—*contd.*

Penalty on person found on premises during closing hours.

25. If, during any period during which any premises are required under the provisions of this act to be closed any person is found on such premises, he shall, unless he satisfies the court that he was an inmate, servant, or a lodger on such premises, or a bonâ fide traveller, or that otherwise his presence on such premises was not in contravention of the provisions of this act with respect to the closing of licensed premises, be liable to a penalty not exceeding forty shillings.

Any constable may demand the name and address of any person found on any premises during the period during which they are required by the provisions of this act to be closed, and if he has reasonable ground to suppose that the name or address given is false, may require evidence of the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or such evidence, apprehend him without warrant, and carry him, as soon as practicable, before a justice of the peace.

Apprehension.

Any person required by a constable under this section to give his name and address who fails to give the same, or gives a false name or address, or gives false evidence with respect to such name and address, shall be liable to a penalty not exceeding five pounds.

Penalty on person falsely pretending to be a traveller.

Every person who by falsely representing himself to be a traveller or a lodger buys or obtains or attempts to buy or obtain at any premises any intoxicating liquor during the period during which such premises are closed in pursuance of this act, shall be liable to a penalty not exceeding five pounds.

The Wine and Beerhouse Act, 1869, s. 16, repealed by the Act of 1872, had a similar provision with reference to persons found on the premises during closing hours, but under that section it was necessary that the keeper of the house should first be convicted of selling during closing hours. The pro-

visions as to name and address were contained in the Wine and Beerhouse Amendment Act, 1870 (33 & 34 Vict. c. 29, s. 6, repealed by the Act of 1872). The penalty on the person falsely pretending to be a traveller in order to obtain liquor was altogether new. The section would seem not to apply to the case of a person found in a refreshment-house having no liquor licence, such a house not being required to be closed "under the provisions of this act."

37 & 38 Vict. c. 49. Entertainment of friends.

[Act of 1874, s. 30. No person keeping a house licensed under this or the principal act shall be liable to any penalty for supplying intoxicating liquors, after the hours of closing, to private friends bonâ fide entertained by him at his own expense.]

As we have seen (p. 102), the now repealed 24th sect. of the Act of 1872 made it penal for liquors to be consumed on licensed premises during closing hours, except by lodgers and travellers. It was, therefore, not legal for the licence holder to entertain his private friends after the closing hour, notwithstanding the case of *Overton* v. *Hunter* (1 L. T., N. S. 366), where the contrary was decided on a charge of "selling" during closing hours under a statute which contained no penalties for mere consumption. It has been already pointed out that the Act of 1874, on which the law of closing now depends, enacts no offence of mere consumption, except in the case of liquors purchased before and consumed after the hour has struck. The right of the licence holder to entertain friends might therefore have been left without an express provision, but this section was enacted apparently to make it still more incontrovertible. It may be doubted whether it succeeds in attaining its object. From the use of the words "licensed under this or the principal act," it is made to apply only to the shopkeepers' spirit licence and the sweets licences provided for by the Act of 1874, and as it enacts an exemption it throws the burden of proof on the licence holder, under sect. 51, subs. 4 of the principal act (p. 138), instead of on the informer, as would have been the case if the section had not been enacted. The odd result is, that on a question of the entertainment of friends the burden of proof is on the defendant, if the licence is granted under the Act of 1872, but in all other cases on the informer.

Act of 1872—*contd.* Exemption from closing by order of local authority in respect of markets and trades.

26. The local authority of any licensing district upon the production of such evidence as such authority may deem sufficient to show that it is necessary or desirable so to do for the accommodation of any considerable number of persons attending any public market, or following any lawful trade or calling, may grant, if such authority think fit, to any licensed victualler or licensed keeper of a refreshment-house, *or to any person licensed to sell beer or cider by retail to be consumed upon the premises,** in respect of pre-

* Added by Licensing Act, 1874, s. 5 (p. 108).

mises in the immediate neighbourhood of such market, or of the place where the persons follow such lawful trade or calling, an order exempting such person from the provisions of this act with respect to the closing of his premises on such days and during such time, except between the hours of one and two of the clock in the morning as may be specified in such order.

The holder of an order under this section shall not be liable to any penalty for not closing his premises on such days and during such time as may be specified in such order; but he shall not be exempt from any other penalty under this or any other act, or otherwise.

Notice of order to be affixed on premises.

A notice in such form as may be prescribed by the local authority, stating the days and hours during which the premises are permitted to be open under such order of exemption, shall be affixed and kept affixed in a conspicuous position outside the premises; and if the holder of the order of exemption make default in affixing or in keeping affixed such notice in manner aforesaid, during any part of the time for which his exemption is granted, he shall be liable to pay a penalty not exceeding five pounds.

Every person who keeps affixed to his premises any such notice when he does not hold an order under this section, shall be liable to a penalty not exceeding ten pounds.

Withdrawal of order.

Any such local authority as aforesaid may at any time, if it seem fit to them, withdraw an order under this section, or alter the same by way of extension or restriction, as such authority may deem necessary or expedient, so however as not to render any person liable to any penalty for anything done under such order before the holder was informed of such withdrawal or alteration.

Local authorities defined.

The following persons and bodies of persons shall be deemed to be local authorities of licensing districts for the purposes of this act; that is to say,

(1.) In the metropolitan police district, the commissioner of police for the metropolis, subject to the approbation of one of her Majesty's principal secretaries of state:

(2.) In the city of London and the liberties thereof, so far as they are not included in the metropolitan police district, the commissioner of city police, subject to the approbation of the Lord Mayor of the said city:

(3.) In any other place, two justices of the peace in petty sessions assembled.

This section is founded upon the Public House Closing Act, 1865 (28 & 29 Vict. c. 77), repealed by the Act of 1872, except so far as concerns refreshment-houses not licensed for the sale of intoxicating liquors.

The local authority must decide for itself as a matter of fact whether the house is "in the immediate neighbourhood" of the market, &c. It would seem fair to see that the order is not desired by any licensed person whose house is nearer the centre of attraction than the applicant's.

The "licensed victualler" is the holder of a general public-house licence (pp. 31, 32). The "licensed keeper of a refreshment-house" means strictly the keeper of a house where no liquors are sold (s. 1 of 23 Vict. c. 27), but in this act, which deals only with intoxicating liquors, it means a holder of a refreshment-house wine licence (p. 66). For the licence to sell beer or cider to be consumed on the premises, to which this privilege of exemption under this section is added by the Act of 1874 (*infra*), see 4 & 5 Will. 4, c. 85, s. 1 (p. 61). This section originally applied to houses near theatres, but was to that extent repealed by the Licensing Act, 1874 (*infra*).

37 & 38 Vict. c. 49.

Exemptions as to theatres repealed.

[Act of 1874, s. 4. An exemption from the above-mentioned hours of closing shall not be granted in respect of premises in the neighbourhood of a theatre, for the accommodation of persons attending the same, and so much of the twenty-sixth section of the principal act as provides for the granting of an order making such exemption shall be repealed.

Exemptions and occasional licences extended to licensees under Act of 1869.

Sect. 5. The grant of an order of exemption under the said twenty-sixth section amended as aforesaid may be made to any person licensed to sell beer or cider by retail, to be consumed upon the premises, as well as to any licensed victualler or licensed keeper of a refreshment-house.

The grant of a licence under the twenty-ninth section of the principal act may be made to any person licensed to sell beer or cider by retail, to be consumed upon the premises, as well as to any licensed victualler or keeper of a refreshment-house in which intoxicating liquors are sold.]

For sect. 29 of the principal act, see p. 111.

Act of 1872—*contd.*

Consumption of intoxicating liquors in refreshment-house not licensed for the sale of liquor forbidden during ordinary closing hours.

27. No intoxicating liquor shall be consumed upon premises licensed as a refreshment-house but not for the sale of any intoxicating liquor during the hours during which the same premises would, if they were the licensed premises of licensed victuallers, be closed by law for the sale and consumption of intoxicating liquor.

If any person licensed to keep such refreshment-house allows any intoxicating liquor to be consumed

on the premises in contravention of this section, he shall be liable for the first offence to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty ponnds.

The refreshment-houses referred to have an excise licence under the first sub-section of 23 Vict. c. 27, s. 1 (p. 66). Houses open for public refreshment, entertainment and resort between ten p.m. and five a.m., are bound to take out this licence.

The section is intended to prevent liquors being bought before closing hours by persons frequenting refreshment-houses and drunk there after closing hours. A mere dancing saloon does not require a refreshment-house licence, not being a place of entertainment in the sense of eating and drinking, so that it does not come under this section, unless it voluntarily takes out the licence. (*Taylor* v. *Oram*, 31 L. J., M. C. 252.)

37 & 38 Vict. c. 49.

Refreshment-houses, not licensed for the sale of liquor, to close at same hour as if a liquor licence were attached to them.

[Act of 1874, s. 11. Whereas by the act of the session of the twenty-seventh and twenty-eighth years of the reign of her present Majesty, chapter sixty-four, it is provided that no persons within the limits of that act shall open or keep open any refreshment-house, to which that act so far as it is unrepealed applies, or sell or expose for sale or consumption in any such refreshment-house any refreshments or any article whatsoever between the hours of one and four o'clock in the morning: and whereas it is expedient to amend the provisions of the said act: be it therefore enacted, that the said act, so far as it is unrepealed, shall be construed as if there were substituted therein for the hour of one o'clock in the morning the hour of the night or morning at which premises licensed for the sale of intoxicating liquors by retail situate in the same place as such refreshment-house are required to be closed, and as if the whole of England were within the limits of the act, and as if the expression "district" in the act included any place in which such refreshment-house is situate.]

The act referred to in this section is the "Public House Closing Act, 1864," which originally applied to public-houses and refreshment-houses equally, but was by the Act of 1872 repealed "except in so far as it relates to refreshment-houses in which intoxicating liquors are not sold." The Act of 1864 was (except in the metropolitan district) a permissive act, which "corporate boroughs" and "board of improvement commissioners" might adopt or not as they pleased in the same manner as the Local Government Act, 1858, may be adopted; the effect of the present section is to extend it to the whole of England, and to read into it the closing (not the opening) hours of sect. 3 (p. 97). The "refreshment-houses" within the scope of the section (sometimes termed night-houses) are licensed by the inland revenue under 23 Vict. c. 27, s. 6 (p. 67), and do not

"Night-houses."

require a magistrates' licence. The police control over such houses is exercised under sections 18, 30—32, 34—38, 41 and 42, of 23 Vict. c. 27, which are repealed by the Act of 1872, only so far as they relate to the sale of liquor. By sect. 18 of 23 Vict. c. 27, constables may enter a refreshment-house as often as they think proper, and refusal to admit them is punishable by a penalty not exceeding 5*l.*, the information to be laid within seven days; by sect. 30 penalties generally are to be proceeded for within three months; by sect. 32 a penalty not exceeding 40*s.* for a first offence, 5*l.* for a second, and 20*l.* for a third is imposed for selling intoxicating liquor without licence, for suffering unlawful games or gaming, or for harbouring prostitutes; by sect. 34 an appeal is given to quarter sessions in the case of any second or third conviction, and by sect. 41 all drunk or disorderly persons must quit a refreshment-house if so requested by the manager or his servant, and constables are required to assist in expelling all such persons on the demand of the manager or his servant.

Police control of refreshment-houses.

"Occasional licences," exempting from the hours of closing on special occasions, may be granted to the keeper of a refreshment-house under the Public House Closing Acts, 1864, s. 7, by the same local authorities respectively as are designated by sect. 26 of the Act of 1872 (p. 107), as having power to grant the order of exemption from closing to the licensed keeper of a refreshment house, *i. e.*, the holder of the refreshment-house wine licence (p. 66). The keeper of a refreshment-house under the excise licence only cannot obtain the "order of exemption." A refreshment-house keeper may open his house at four in the morning, and may sell refreshments to "persons lodging in his house" (27 & 28 Vict. c. 64, s. 5). He would seem, however, to have no power to sell to travellers in closing hours.

Act of 1872—*contd.*

Refreshment-houses licensed for the sale of wine must close at 10 P.M.

28. Every refreshment-house in respect of which a licence is granted for the sale therein by retail of foreign wine, upon which licence an abatement of duty has been allowed under section nine of the act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-one, intituled "An Act to amend the Laws relating to the Inland Revenue," shall be closed every night at ten of the clock; and if any person keeping any such refreshment-house as is mentioned in this section sells or exposes for sale in such refreshment-house, or opens or keeps open any such refreshment-house for the sale of intoxicating liquors during the time that such house is directed to be closed by this section, or during such time as aforesaid allows any intoxicating liquor to be consumed on such premises, he shall for the first offence be liable to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds.

Penalty for not closing refreshment-house licensed for the sale of wine.

Convictions under this section may be recorded on the licences, if the court thinks fit, and in any case certain formalities pre-

scribed by sect. 13 of the Act of 1874 (p. 113) must be gone through. As the section originally stood, the conviction was to be recorded on the licence, "unless the convicting justices should otherwise direct." There was also a provision relative to closing at nine o'clock which is rendered ineffective by the repeal of the 24th section of the Act of 1872. The penal clause of this section differs from sect. 9 of the Act of 1874 (p. 101) in enacting as an offence the mere consumption of wine during closing hours. Persons holding both the beer-house licence and the refreshment-house wine licence (see p. 67, note), would appear to be keepers of refreshment-houses within the meaning of this section.

Occasional licences exempting from provisions as to closing hours.

29. If any licensed victualler or keeper of a refreshment-house in which intoxicating liquors are sold, *or any person licensed to sell beer or cider by retail to be consumed upon the premises,** applies to the local authority of a licensing district for a licence exempting him from the provisions of this act relating to closing of premises on any special occasion or occasions, it shall be lawful for such local authority, if in his discretion he thinks fit so to do, to grant to the applicant an occasional licence exempting him from the provisions of this act relating to closing of premises during certain hours, and on the special occasion or occasions to be specified in the licence; and no licensed victualler or keeper of a refreshment-house, *or any person licensed to sell beer or cider by retail to be consumed upon the premises,** to whom an occasional licence has been granted under this section shall be subject to any penalty for the contravention of the provisions of this act relating to the closing of premises during the time to which his occasional licence extends, but he shall not be exempted by such occasional licence from any penalty to which he may be subject by any other provision of this or any other act of parliament.

This section is substituted for sect. 7 of 27 & 28 Vict. c. 64, repealed by the present act. Occasional licences, properly so called, allow a licensed person to sell in a place other than the licensed premises (sect. 19, note, *infra*) on special occasions. The licence under this section allows the holder of a public-house licence or a refreshment-house wine licence to sell on the licensed premises during closing hours upon special occasions. Unlike occasional licences proper, the licence under this section has no corresponding excise licence.

Occasional Licences.

37 & 38 Vict. c. 49. Occasional

[Act of 1874, s. 18. Any person selling or exposing for sale any intoxicating liquor in any booth, tent, or

* Added, Licensing Act, 1874, s. 5 (p. 108).

licence required at fairs and races.

place within the limits of holding any lawful and accustomed fair or any races without an occasional licence authorizing such sale shall, notwithstanding anything contained in any act of parliament to the contrary, be deemed to be a person selling or exposing for sale by retail intoxicating liquor at a place where he is not authorized by his licence to sell the same, and be punishable accordingly.

Provided that this section shall not apply to any person selling or exposing for sale intoxicating liquors in premises in which he is duly authorized to sell the same throughout the year, although such premises are situate within the limits aforesaid.

The occasional licences within the purview of this and the two following sections are grantable in the discretion both of the inland revenue and a magistrate, and relate to the place as well as to the time of sale; whereas the occasional licence under s. 29 of the Act of 1872 is grantable by the magistrates only, and relates to the time of sale only.

This section gets rid of the effect of the decision in *Hayward* v. *Holland* (28 L. T., N. S. 702; 21 W. R. 920), that the Act of 1872 had not affected the long-standing statutory saving for sale at fairs, which occurred in 5 & 6 Edw. 6, c. 25, s. 6; 35 Geo. 3, c. 113; 6 Geo. 4, c. 81, s. 11; 25 & 26 Vict. c. 22, s. 12; 26 & 27 Vict. c. 33, s. 21, and Act of 1869, s. 20. For the penalty, see sect. 3 of the Act of 1872 (p. 80).

Occasional licences,—extension of time for closing.

Sect. 19. Whereas by the twentieth section of the act of the session of the twenty-sixth and twenty-seventh years of the reign of her present Majesty, chapter thirty-three, it is provided that the hours during which an occasional licence shall authorize the sale of any beer, spirits, or wine shall extend from sunrise until one hour after sunset: be it enacted, that the said section shall be construed as if in place of the words "sunrise until one hour after sunset" there were inserted the words "such hour not earlier than sunrise until such hour not later than ten o'clock at night as may be specified in that behalf in the consent given by the justice for the granting of such occasional licence."

Occasional licences.

By 25 Vict. c. 22, s. 13, it is enacted, that it shall be lawful for the commissioners of inland revenue whenever they shall consider it conducive to public convenience, comfort and order, and with the consents in writing of two justices of the peace usually acting at the petty sessions for the petty sessional division within which the place of sale is situate, to authorize any officer of excise to grant to any person who shall be duly authorized to keep a common inn, alehouse or victualling-house, and who shall have taken out the proper excise licence to sell therein beer, spirits, wine or tobacco, an occasional licence under this act empowering him to sell the like articles for which he shall have taken

out such licences as aforesaid at any such other place and for and during such space or period of time not exceeding three consecutive days at any one time as the said commissioners shall approve and as shall be specified in such occasional licence; provided that no such occasional licence shall authorize the sale of any beer, spirits or wine, except during the hours after sunrise and before sunset; nor shall any such licence be granted for the sale of any of the articles herein mentioned on any Sunday, Christmas Day or Good Friday, or on any day appointed for a fast or public thanksgiving.

By 26 & 27 Vict. c. 33, s. 20, it is provided, "(1) that the consent of one justice of the peace only shall be necessary; (2) that the hours during which such occasional licence shall authorize the sale of any beer, spirits or wine shall extend from sunrise to one hour after sunset; (3) that upon the occasion of any public dinner or ball it shall be lawful for the person who shall have obtained an occasional licence to sell the said liquors during such hours before or after sunrise or sunset, as shall be allowed and specified in that behalf in the consent to be given by the justice of the peace for the granting of such occasional licence." The 5th section of 27 & 28 Vict. c. 18, extends the power to grant occasional licences to persons holding the refreshment-house wine licence (see p. 66), and the licence for beer to be drunk on the premises (see p. 61).

Offences on premises with occasional licence.

Sect. 20. For the purpose of so much of the principal act as relates to offences against public order, that is to say, sections twelve to eighteen, both inclusive, and the sections for giving effect to the same, a person taking out an occasional licence shall be deemed to be a licensed person within the meaning of the said sections, and the place in which any intoxicating liquors are sold in pursuance of the occasional licence shall be deemed to be licensed premises, and to be the premises of the person taking out such licence.

See sections 12—18, *ante*, pp. 88—94.

The sections for giving effect to them include sect. 30 (p. 114), and its ancillary sections with respect to the recording of convictions upon the licence. A conviction for an offence occurring on the place for which the occasional licence is in force would of course be recorded not on the occasional but the permanent licence.

Record of Convictions.

Record of convictions on licences.

Act of 1874, s. 13. Where any licensed person is convicted of any offence against the principal act which by such act was to have been or might have been endorsed upon the licence, or of any offence against this act, the court before whom the offender is brought shall cause the register of licences in which the licence of the offender is entered, or a copy of the entries therein relating to the licence of the offender, certified in manner prescribed by section fifty-eight of the

principal act, to be produced to the court before passing sentence, and after inspecting the entries therein in relation to the licence of the offender, or such copy thereof as aforesaid, the court shall declare, as part of its sentence, whether it will or will not cause the conviction for such offence to be recorded on the licence of the offender, and if it decide that such record is to be made, the same shall be made accordingly.

A declaration by the court that a record of an offence is to be made on a licence shall be deemed to be part of the conviction or order of the court in reference to such offence, and shall be subject accordingly to the jurisdiction of the court of appeal.

Appeal against record of conviction.

A direction by the court that a conviction for an offence is to be recorded on the licence of the offender shall, for the purposes of the principal act, be deemed equivalent to a direction or requirement by the act that such conviction is to be recorded; and all the provisions of the principal act importing that convictions are required or directed by the act to be recorded on the licence of an offender shall be construed accordingly.]

List of recordable offences.

By the Act of 1872 the following offences were made absolutely recordable on the licence:—(1) allowing liquors to be drunk in evasion of licence (s. 5); (2) carrying liquors away from premises in evasion of licence (s. 6); (3) adulterating with deleterious ingredients (s. 19); and (4) obstructing a constable (s. 35). The following offences were made recordable, "unless the convicting magistrate or justices shall otherwise direct": — (1) permitting drunkenness (s. 13); (2) harbouring prostitutes (s. 14); (3) harbouring constable (s. 16); (4) permitting gaming or unlawful games (s. 17); and (5) selling during closing hours (ss. 24 and 28). The Act of 1874, s. 33, repealed so much of the sections creating the above offences as relate to recording convictions on the licence, but this section refers to the former state of things by the words "was to have been or might have been endorsed on the licence." The words "or of any offence against this act" are added because the offences of adulteration, obstructing constables and selling during closing hours do not now appear in the Act of 1872, but are provided for in the Act of 1874, by sects. 14, 16 and 10 respectively. Upon a conviction for anyone of the nine offences above enumerated, the formalities prescribed by this section must be gone through, and if the justices think fit the conviction recorded on the licence.

As to the procedure for obtaining the production of the licence for the purpose of recording the conviction, see sect. 55 of Act of 1872, p. 142.

Repeated Convictions.

Act of 1872—*contd.*

Forfeiture of licence and

30. If any licensed person on whose licence two convictions for offences committed by him against this

act have been recorded is convicted of any offence which is directed by this act to be recorded on his licence, the following consequences shall ensue; that is to say, disqualifications on repeated convictions.

(1.) The licence of such licensed person shall be forfeited, and he shall be disqualified for a term of five years from the date of such third conviction from holding any licence; and

(2.) The premises in respect of which his licence was granted shall, unless the court having cognizance of the case in its discretion thinks fit otherwise to order, be disqualified from receiving any licence for a term of two years from the date of such third conviction:

Provided that nothing in this section contained shall prevent the infliction by the court of any pecuniary penalty or any term of imprisonment to which such licensed person would otherwise be liable, or shall preclude the court from exercising any power given by any other section of this act of disqualifying such licensed person or such premises for a longer period than the term mentioned in this section.

It will be seen from this section that the third conviction, on which the licence is forfeited, is not required to be recorded on the licence. It is enough if two convictions have been recorded and a conviction of a recordable offence takes place. The justices, if they convict of the third offence, have no power to prevent the consequences mentioned in the section.

If a licence with a conviction recorded is renewed, the conviction counts against the renewed licence (sect. 48 subs. 2). Where a removal takes place under sect. 50, it would seem that there is nothing to prevent the convictions, already recorded upon the licence removed, from counting against the holder in the new premises, and also against the new premises themselves; otherwise the position of the holder in the new premises would be altogether different from what it was before the removal.

Under sect. 56 the owner of premises ordered to be disqualified is allowed to defend the disqualification on specified grounds.

31. The following additional provisions shall be enacted with respect only to convictions of persons who may hereafter become licensed in respect of premises, and shall not apply to a conviction of any person licensed for any premises at the passing of this act so long as he is licensed in respect of the same premises; viz., Premises disqualified by convictions of successive tenants in certain cases.

1. The second and every subsequent conviction recorded on the licence of any one such person shall also be recorded in the register of licences against the premises:

2. When four convictions (whether of the same or of different licensed persons) have within five years been so recorded against premises, those premises shall during one year be disqualified for the purposes of this act:

3. If the licences of two such persons licensed in respect of the same premises are forfeited within any period of two years, the premises shall be disqualified for one year from the date of the last forfeiture:

provided that where any premises are disqualified under this section notice of such disqualification shall be served upon the owner of the premises in like manner as an order of disqualification is required to be served under this act, and the regulations for the protection of the owner of premises in case of an order of disqualification shall, so far as the same are applicable, extend to the case of disqualification under this section.

For a list of offences which may be recorded on the licence, see note to sect. 30. The procedure by which the owner is allowed to appeal against the disqualification of his premises is provided by sect. 56.

Conviction after five years not to increase penalty.

32. A conviction for any offence under this act shall not after five years from the date of such conviction be receivable in evidence against any person for the purpose of subjecting him to an increased penalty or to any forfeiture.

This section will not apply to convictions tending to disqualify premises.

Omission to record conviction on licence supplied.

33. Where a conviction for an offence is by this act directed to be recorded on the licence of any person, the fact of no such record having been made shall not, if such conviction be otherwise proved to the satisfaction of the court having cognizance of any case under this act, exempt such person or the premises occupied by him from any penalty to which such person or premises would have been subject if such record had been duly made. And on such proof being given the omitted conviction may be recorded accordingly, and shall be deemed to have been duly recorded in accordance with this act.

This section was originally intended to apply to convictions recordable absolutely, or "unless otherwise directed." It would seem to apply to the present purely discretionary mode of recording in a case where a direction to record is given, but the conviction not actually recorded on the licence.

34. If any person defaces or obliterates, or attempts to deface or obliterate, any record of a conviction on his licence, he shall be liable to a penalty not exceeding five pounds.

Penalty for defacing record of conviction on licence.

35. [*Entry on licensed premises by constable. Power to enter unlicensed premises by search warrant. Repealed, Licensing Act,* 1874. *See now ss.* 16, 17, *of that act, infra.*]

Regulations as to entry on Premises.

[Act of 1874, s. 16. Any constable may, for the purpose of preventing or detecting the violation of any of the provisions of the principal act or this act which it is his duty to enforce, at all times enter on any licensed premises, or any premises in respect of which an occasional licence is in force.

37 & 38 Vict. c. 49. Constable may enter on premises for enforcement of act.

Every person who, by himself, or by any person in his employ or acting by his direction or with his consent, refuses or fails to admit any constable in the execution of his duty demanding to enter in pursuance of this section, shall be liable to a penalty not exceeding for the first offence five pounds, and not exceeding for the second and every subsequent offence ten pounds.

A conviction under this section may be recorded on the licence, as being a conviction of an offence against the Act of 1874. See sect. 13 of that act (p. 113 and note).

The right of entry was first given by 4 & 5 Will. 4, c. 85, s. 7, which, although a beer act, applied to all houses licensed for the sale of liquor to be drunk on the premises, and empowered constables to enter "when and so often as they should think proper." A very similar power, extending in general to houses for the sale of liquor not to be drunk on the premises, was subsequently given by 11 & 12 Vict. c. 49, s. 5; by 18 & 19 Vict. c. 118, s. 4; by 23 Vict. c. 27, s. 18; by 32 & 33 Vict. c. 27, s. 12; by 33 & 34 Vict. c. 29, s. 13; and finally by the now repealed sect. 35 of the Licensing Act, 1872, which repealed all the above enactments on the subject. The words of that section were: "A constable may at all times enter on any licensed premises; he may also examine every room and part of such premises, and take an account of all intoxicating liquor stored therein;" a much more absolute right than that given by the present section.

Qualification of right of entry.

The right of entry is now subject to two qualifications. The constable can only enter "for the purpose of preventing or detecting a violation of the law," and it must be within the scope of his duty to enforce it. The first seems intended to prevent a constable from entering without being able to assign any reason for so doing, should his right of entry be subsequently questioned in a court of law. He must have some reasonable ground in fact for suspicion. The second qualification, although somewhat vague, seems intended to prevent the entrance of the

constable when not on duty. For the penalty for harbouring constables, see sect. 17 of the Act of 1872 (p. 93), and for the duty of constables to turn out drunken men from licensed premises on the demand of the licensed person to aid in expelling drunken persons, see sect. 18 (p. 94).

"Licensed premises" means all premises holding any kind of magistrates' licence (Act of 1872, s. 74, p. 153). Premises include an out-house. (*R.* v. *Tott*, 30 L. J., M. C. 177.)

For the absolute power of entry into refreshment-houses not licensed for the sale of liquor, see p. 110.

Search warrant for detection of liquors sold or kept contrary to law.

Sect. 17. Any justice of the peace, if satisfied by information on oath that there is reasonable ground to believe that any intoxicating liquor is sold by retail or exposed or kept for sale by retail at any place within his jurisdiction, whether a building or not, in which such liquor is not authorized to be sold by retail, may in his discretion grant a warrant under his hand, by virtue whereof it shall be lawful for any constable named in such warrant, at any time or times within one month from the date thereof, to enter, and, if need be by force, the place named in the warrant, and every part thereof, and examine the same and search for intoxicating liquor therein, and seize and remove any intoxicating liquor found therein which there is reasonable ground to suppose is in such place for the purpose of unlawful sale at that or any other place, and the vessels containing such liquor; and in the event of the owner or occupier of such premises being convicted of selling by retail or exposing or keeping for sale by retail any liquor which he is not authorized to sell by retail, the intoxicating liquor so seized and the vessels containing such liquor shall be forfeited.

Penalty on persons found on premises where liquors illegally sold.

When a constable has entered any premises in pursuance of any such warrant as is mentioned in this section, and has seized and removed such liquor as aforesaid, any person found at the time on the premises shall, until the contrary is proved, be deemed to have been on such premises for the purpose of illegally dealing in intoxicating liquor, and be liable to a penalty not exceeding forty shillings.

Any constable may demand the name and address of any person found on any premises on which he seizes or from which he removes any such liquor as aforesaid, and if he has reasonable ground to suppose that the name or address given is false may examine such person further as to the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or to answer satisfactorily the questions put to him by the constable, apprehend

him without warrant and carry him as soon as practicable before a justice of the peace.

Any person required by a constable under this section to give his name and address who fails to give the same, or gives a false name or address, or gives false information with respect to such name and address, shall be liable to a penalty not exceeding five pounds.] Penalty for giving false name.

The first paragraph of the present section, down to the word "liquor," is precisely the same as the repealed enactment which it replaces: the remaining sentence of that paragraph supplies an omission in that enactment in reference to the disposal of the liquor seized. Before the Act of 1872, liquor seized under a corresponding section of 33 & 34 Vict. c. 29, might be sold, and it was held under that section that no sale could take place without the owner being first heard. (*Gill* v. *Bright*, 41 L. J., M. C. 23.) The owner must be convicted before the forfeiture can take place.

The new penalty imposed on persons found on the premises would seem not to apply to the purchasers of liquor illicitly sold. The word used is "dealing," which implies a series of transactions, and appears to be pointed at sellers.

Registers.

Act of 1872—*contd.*

Register of licences to be kept in licensing districts.

36. There shall be kept in every licensing district by the clerk of the licensing justices of that district a register, to be called a register of licences, in such form as may be prescribed by such justices, containing the particulars of all licences granted in the district, the premises in respect of which they were granted, the names of the owners of such premises, and the names of the holders for the time being of such licences. There shall also be entered on the register all forfeitures of licences, disqualifications of premises, records of convictions, and other matters relating to the licences on the register.

Name of owner to be stated by applicant and indorsed on licence.

Every person applying for a new licence, or the renewal of a licence, shall state the name of the owner of the premises in respect of which such licence is granted or renewed, and such name shall be endorsed on the licence, and the person whose name is so stated shall, subject as hereinafter mentioned, be deemed for the purposes of this act to be the owner of the premises.

Search of register by ratepayers, owners and licence holders.

A court of summary jurisdiction may, on the application of any person who proves to the court that he is entitled to be entered as owner of any premises in place of the person appearing on the register to be the owner, make an order substituting the name of the

applicant, and such order shall be obeyed by the clerk of the licensing justices, and a corresponding correction may be directed to be made on the licence granted in respect of the premises of which such applicant claims to be the owner.

Search of register by ratepayers, owners and licence holders.

Any ratepayer, any owner of premises to which a licence is attached, and any holder of a licence within a licensing district shall, upon payment of a fee of one shilling, and any officer of police, and any officer of inland revenue in such district, without payment, shall be entitled at any reasonable time to inspect and take copies of or extracts from any register kept in pursuance of this section for such district; and the clerk of the licensing justices and every other person who prevents the inspection or taking copies of or extracts from the same, or demands any unauthorized fee therefor, shall be liable to a penalty not exceeding five pounds for each offence.

The licensing justices may, if they think fit, cause the register kept in pursuance of this section to be divided into parts and assign a part to any portion of the licensing district; and there shall be paid by each licensed person to the clerk in respect of such registration the sum or fee of one shilling for every licence granted or renewed.

Registration fee.

Besides the registers directed to be kept by this section, a register of licences is in the case of beer-houses (1 Will. 4, c. 64, s. 2), and also in the case of refreshment-houses (23 Vict. c 27, s. 16), directed to be kept by the excise authorities, and to be open to the inspection of the justices.

Amendment of Law as to Grant of Licences.

Counties.

Grant of new licences to be confirmed by "county licensing committee."

37. In counties a grant of a new licence shall not be valid unless it is confirmed by a standing committee of the county justices, in this act called the county licensing committee.

The justices in quarter sessions assembled for every county shall annually appoint from among themselves for the purposes of this act a county licensing committee, or they may appoint more than one such committee, and assign to any such committee such area of jurisdiction as they may think expedient.

A county licensing committee shall consist of not less than three nor more than twelve members.

Constitution of county licensing committee.

The quorum of a county licensing committee shall be three members.

Any vacancies arising in any such committee from

death, resignation or other causes, may be from time to time filled up by the justices in quarter sessions by whom the committee is appointed.

A county licensing committee shall be deemed to be a standing committee of the quarter sessions by whom they are appointed for the year succeeding their appointment, and their jurisdiction and proceedings shall not be affected by the termination of the sessions at which they were appointed. The members of a committee retiring at the end of the year may be re-appointed; and if from any cause members have not been appointed in any year to succeed the retiring members, such retiring members may continue to act as the committee until their successors are appointed.

The justices in quarter sessions shall make such regulations with respect to the meetings of any such committee and the transaction of business thereat as they may think fit.

Clerk of the peace to be clerk.

The clerk of the peace of the county shall by himself or his deputy be the clerk of the county licensing committee or committees, and shall perform all such duties in relation to any such committee or committees as he is required by law to perform in relation to the justices in quarter sessions assembled.

"New licence."

By the interpretation clause of the Act of 1874 (p. 158), "new licence" means a licence "granted at a general annual licensing meeting in respect of premises, in respect of which a similar licence has not theretofore been granted." The definition provided by sect. 74 of the Act of 1872 is repealed, and the new definition expressly requires that unless the licence attached to the house in question is the same as the licence applied for, the application must be for a new licence. The holder of a beer-house licence, therefore, if he wishes to have his house licensed as a public-house, must make his application for a new licence, and so for every particular additional licence which may be desired. In *Marwick* v. *Codlin* (30 L. T., N. S. 719), it was decided that the old definition bore the meaning now expressly contained in the new. Notwithstanding the words "not theretofore been *granted*," the definition would seem to refer not merely to a licence granted at any former time but to a licence held continuously up to the time in question; so that although a licence had been formerly attached to the premises, yet, if the continuity of licence holders has been broken, any subsequent application in respect of the same premises is an application for a new licence and requires to be confirmed. There are two cases in which grants of licences are made to which this section might, at first sight, seem to apply,—the transfer of a licence to new premises when the old have unavoidably become unfit for their purpose, and the transfer when the previous occupant has neglected to renew (see p. 40). These licences, however, although the first be for a house not before licensed, and in the second there be a

break of continuity, are not within this section, because they may be obtained at special sessions and not necessarily at the general annual meeting.

Alteration of premises.

An important question arises, how far an alteration of premises already licensed may make it necessary to apply for "a new licence" in respect of them. It was held, in *R.* v. *Albert Smith* (15 L. T., N. S. 179), that it was a question of fact for the justices to determine whether an addition to a house made it substantially a new one so as to require notices under sect. 10 of the Act of 1828. That act required notices to be given in the case of a "house not theretofore kept as an inn." The 10th section is now repealed, sect. 40 of the Act of 1872 being substituted for it, and the present test is not whether the house be the same house, but whether the premises be the same premises. The word "premises" is not used of a house only, but of a house with its appurtenances, so that, applying the case of *R.* v. *Albert Smith* (*ubi sup.*), it will be a question for the justices, whether a licence proposed to be renewed is in respect of a house and appurtenances substantially the same as when the licence was originally granted.

For the procedure as to the grant of new licences, and the discretion of the justices in granting them, see sect. 1 of the Act of 1828, and notes, pp. 31—33, and sect. 9, p. 38.

There is in this section no reference to the powers of the licensing committee, except what is contained in the word "confirm." That word would seem to imply that their discretion must be exercised in the same way as that of the court, whose decision they confirm or annul. This view is supported by a reference to the procedure provided by sect. 43, *infra*, which assumes that the question of confirmation or no confirmation is to be judicially heard. For the confirmation there must be a clear majority. (Act of 1828, s. 9; *R.* v. *Belton*, 17 L. J., M. C. 70.) In the case of a division of opinion in the joint committee who confirm licences in small boroughs the chairman has a second vote.

Boroughs.

Where ten justices, new licences to be granted by borough licensing committee, and confirmed by whole body of borough justices.

38. In boroughs in which at the commencement of the time appointed for the annual appointment of a licensing committee in this section mentioned there are ten justices acting in and for such borough or upwards, new licences shall be granted by a committee, who shall for the purpose of such new licences perform all the duties and be subject to the obligations of licensing justices.

In every such borough as aforesaid the justices acting in and for such borough shall annually in the fortnight preceding the commencement of the period during which the general annual licensing meeting for such borough may be held appoint from among themselves for the purposes of this act a committee of not less than three nor more than seven in number, but no justice shall be appointed a member of such committee unless he is qualified to act under this act.

Number of borough committee.

Any vacancies arising in such committee (in this act

referred to as the borough licensing committee) from death, resignation, or other causes, may be from time to time filled up by the justices by whom the committee is appointed.

The quorum of a borough licensing committee shall be three members. Quorum.

The members of the borough licensing committee retiring at the end of the year may be re-appointed; and if from any cause members have not been appointed in any year to succeed the retiring members, such retiring members may continue to act as the borough licensing committee until their successors are appointed.

The grant of a new licence by a borough licensing committee shall not be valid unless it is confirmed by the whole body of borough justices, who would, if this act had not passed, have been authorized to grant licences, or by a majority of such body present at any meeting assembled for the purpose of confirming such licences. Confirmation.

In boroughs in which there are not ten justices acting in and for such borough at such time as aforesaid, new licences shall be granted by the qualified borough justices, but the grant of a new licence by such justices shall not be valid unless it is confirmed by a joint committee appointed in respect of such borough in manner hereinafter mentioned: Where not ten justices, new licences to be granted by borough justices and confirmed by joint committee of borough and county justices.

A joint committee for any such borough as last aforesaid shall consist of three justices of the county in which such borough is situate and three justices of the borough, but no justice shall be appointed a member of such committee unless he is qualified to act under this act. The three county justices on a joint committee shall be appointed by the county licensing committee. The same county justices may be appointed members of more than one joint committee under this section. The borough justices on a joint committee shall be appointed by the justices of the borough for which they act, or by the majority of such justices assembled at any meeting held for that purpose. Any casual vacancy arising in the joint committee from death, resignation, or other cause, may from time to time be filled up by the justices by whom the person creating such vacancy was appointed. The quorum of the joint committee shall be five members. The senior magistrate on the joint committee present Quorum of joint committee.

at any meeting shall be its chairman; and in the event of an equal division of the committee the chairman shall have a second vote:

No objection shall be made to any licences granted or confirmed in pursuance of this section on the ground that the justices or committee of justices who granted or confirmed the same were not qualified to make such grant or confirmation.

Concurrent jurisdiction abolished.

From and after the passing of this act, the justices of a county shall not for licensing purposes, save in so far as respects the power of appointing members of a joint committee, have any jurisdiction in a borough in which the borough justices have for such purposes concurrent jurisdiction.

For the meaning of the term "new licence" see note to s. 37, *supra*. For the obligations of licensing justices see Act of 1828, s. 1, and note, pp. 31—33.

The commencement of the period for holding the general annual meeting is in Middlesex and Surrey the first of March, and in other counties the 20th August (see pp. 30, 31). The words "in the fortnight preceding" mean, at any date during the fortnight, and not necessarily a fortnight before the commencement of the period. For the concurrent jurisdiction abolished see p. 37, note.

37 & 38 Vict. c. 49. Supply of deficiency in quota of borough justices on joint committee.

[Act of 1874, s. 21. Where from any reason there are not for the time being three qualified borough justices to form the quota of a joint committee for such borough, in pursuance of section thirty-eight of the principal act, the deficiency in number of such borough justices shall be supplied by qualified county justices to be appointed by the county licensing committee.

It is not clear from the wording of this section whether it is intended to apply to a case where the whole number of borough justices on the commission is reduced by disqualification for licensing purposes to less than three, or to a case where there are not three acting qualified justices. The words "from any reason" seem to point to the wider interpretation, but no machinery is provided by which the borough can inform the county licensing committee of the deficiency. If there should be any prospect of a deficiency it would seem advisable for the borough justices to meet for the purpose of appointing their quota before the meeting of the county licensing committee.

Provisional grant and confirmation of licences to new premises.

Sect. 22. Any person interested in any premises about to be constructed or in course of construction for the purpose of being used as a house for the sale of intoxicating liquors to be consumed on the premises may apply to the licensing justices and to the confirming authority for the provisional grant and confirmation of a licence in respect of such premises; and the jus-

tices and confirming authority, if satisfied with the plans submitted to them of such house, and that if such premises had been actually constructed in accordance with such plans they would, on application, have granted and confirmed such a licence in respect thereof, may make such provisional grant and order of confirmation accordingly. Plans.

A provisional grant and order of confirmation shall not be of any validity until it has been declared to be final by an order of the licensing justices made after such notice has been given as may be required by the justices, at a general annual licensing meeting or a special sessions held for licensing purpose. Such declaration shall be made if the justices are satisfied that the house has been completed in accordance with such plans as aforesaid, and are also satisfied that no objection can be made to the character of the holder of such provisional licence. Ratification of provisional grant.

A provisional grant and confirmation of a licence shall be subject to the same conditions as to the giving of notices and generally as to procedure to which such grant and confirmation would be subject if they respectively were not provisional, with this exception, that where a notice is required to be put up on a door of a house such notice may be put up in a conspicuous position on any part of the premises. Notices.

This section shall, with the necessary variations, extend to the provisional removal to any premises of an existing licence under section fifty of the principal act.

The words "any person interested" which confer a *locus standi* to apply under this section will include any person possessing a proprietary interest of whatever character, whether as landlord, tenant or otherwise.

The provisional grant and the provisional confirmation of the licence are both alike purely discretionary with the granting and confirming body respectively, the justices being placed in the same position as if the plans were carried into effect and they were asked to grant or confirm the licence.

For the statutory requirements as to structural adaptation, see Act of 1872, sect. 45, p. 132. When once the provisional grant and order have been made, the words "such declaration shall be made" restrict the grounds of refusal to ratify to two: (1) the non-completion of the house in accordance with the plans; and (2) the character of the person who is to hold the licence. It would seem from the general scheme of the section that there is no necessity that the occupier of the proposed licensed house should be ascertained at the time of the application for the provisional grant, which may be made to the "person interested." The ratification, however, of the provisional grant is made subject to the giving of such notices "as may be required by the Structural adaptation.

justices," and this condition will give the justices an opportunity of requiring fresh notice to be given in cases where the original notice did not mention the name of the proposed tenant, in order that objection, if any, may be made to his character.

One licence of justices may extend to several excise licences.

Sect. 23. Separate licences of justices shall not be required in the case of separate excise licences, and a licence of justices shall comprehend a permission to the licensee to take out as many excise licences as may be specified in such licence of the justices.

This section is directed to the comprehension in one document, so far as the magistrates are concerned, of the numerous licences grantable under the Acts of 1869 and 1872, which, unlike the single public-house licence grantable under the Act of 1828, which authorized the taking out of as many excise licences as the holder pleased, were formerly granted as separate documents, in accordance with the official forms issued under sect. 48 of the Act of 1872. It may be remarked that the statutory form under the Act of 1869, which the official form superseded, was drawn comprehensively, as directed by this section.

For the effect of the alteration upon the justices clerks' fees for licences under the Act of 1869, see sect. 15 of the Act of 1828, and note, p. 45.

Any combination of the numerous licences under the Acts of 1869 and 1872 may, it would seem, be expressed upon the single document, even so as to authorize the sale of liquor both for consumption on, and for consumption off, the premises.

Confirmation dispensed with in some cases.

Sect. 24. A licence to sell any intoxicating liquor for consumption only off the premises shall not require confirmation by any authority.

This section dispenses with the confirmation either by the county licensing committee, the whole body of borough justices or the joint committee, as the case may be, of new licences for the sale of liquors, not to be drunk on the premises, required for all new licences by the Act of 1872.

Joint committee to make rules as to confirmation.

Sect. 25. Where the confirming authority is a joint committee, that committee shall make rules in pursuance of section forty-three of the principal act as to the proceedings to be adopted for the confirmation of new licences, and as to the costs of such proceedings, and the persons by whom such costs are to be paid.

For sect. 43 of the principal act, see p. 130.

Beer-dealer's retail beer licence grantable at special sessions.

Sect. 31. An additional retail licence to sell beer for consumption off the premises may be granted at any special sessions for licensing purposes to the holder of a strong beer dealer's wholesale excise licence, in the same manner and subject to the same conditions in and

subject to which it might be granted at any general annual licensing meeting.]

This licence, granted by the excise under 26 & 27 Vict. c. 33, s. 1, was brought under the control of the magistrates by the Act of 1869. See p. 56.

Act of 1872—*contd.*

Stipendiary magistrates.

39. Beyond the limits of the jurisdiction of the metropolitan police courts a metropolitan police or stipendiary magistrate may act as one of the justices empowered to grant or confirm licences so far as regards any licensing district wholly or partly within his jurisdiction.

A stipendiary magistrate may do alone any act authorized to be done by two justices (21 & 22 Vict. c. 73, s. 1); but the jurisdiction in relation to the grant or transfer of any licence was excluded by sect. 3 of that act. "Licensing justices" are defined in the interpretation clause as "justices having jurisdiction in respect of new licences," which appear to be words of identification only, and it would seem not intended in this case to exclude stipendiary magistrates from acting in respect of renewals and transfers, although in terms their jurisdiction is confined to granting and confirming. Stipendiary magistrates may grant temporary transfers in the metropolitan parishes except in the borough of Southwark (5 & 6 Vict. c. 44, s. 1, p. 43).

Notices of application.

40. Every person intending to apply for a new licence, or to apply for the transfer of a licence, shall publish notice of such application as follows; that is to say,

New licence.

(1.) In the case of a new licence, he shall cause notice thereof to be given and to be affixed and maintained in manner directed by section seven of the Wine and Beerhouse Act, 1869, and any enactment amending the same, and shall advertise such notice in some paper circulating in the place in which the premises to which the notice relates are situate, on some day not more than four and not less than two weeks before the proposed application, and on such day or days, if any, as may be from time to time fixed by the licensing justices:

Transfer.

(2.) In the case of the transfer of a licence he shall, fourteen days prior to one of the special sessions appointed by the justices for granting transfers of such licences, serve a notice of his intention to transfer the same upon one of the overseers of the parish, township, or

place in which the premises in respect of which his application is to be made are situate, and on the superintendent of police of the district. This notice shall be signed by the applicant or by his authorized agent, and shall set forth the name of the person to whom it is intended that such licence shall be transferred, together with the place of his residence, and his trade or calling during the six months preceding the time of serving such notice:

Substitution of seal for signature of justices.

(3.) Any licence may be authenticated in manner in which a certificate may be authenticated in pursuance of sub-section two of section four of the Wine and Beerhouse Act Amendment Act, 1870, and the provisions of the said sub-section shall apply accordingly.

The provisions of this section as to notices shall extend to all cases where, under the Intoxicating Liquors Act, 1828, notices are required to be served in a like form to or in the same manner as notices for new licences.

For the definition of new licence, see sect. 32 of the Act of 1874, and note to sect. 37 of the Act of 1872, p. 121. For sect. 7 of the Wine and Beerhouse Act, 1869, see p. 71. For sect. 4 of the Amendment Act, 1870, see p. 73. The Act of 1828 requires notices to be served as for a new licence, when the transfer is to be made to fresh premises (s. 14, p. 40).

For transfers five days' notice only was required by the Act of 1828, s. 11, now repealed. For the cases in which a transfer may be made, see Act of 1828 (s. 14, p. 40). By sect. 50 of the present act, notices upon "removals" are to be given as for "new licences."

As to whether notices are required as for a new licence in the case of an addition to licensed premises, see sect. 37 of the Act of 1872 and note, p. 121.

Amendment of 5 & 6 Vict. c. 44, s. 2, with respect to licences wilfully withheld.

41. Whereas by the second section of the act of the session of the fifth and sixth years of the reign of her present Majesty, chapter forty-four, the magistrates or justices in petty sessions are empowered in the event of a licence being lost or mislaid to receive a copy of such licence, and to deal therewith in manner in the said section mentioned: and whereas it is expedient to extend the power of such magistrates or justices to the reception of a copy of a licence in the event of a licence being wilfully withheld by the holder thereof: be it enacted, that such section be construed as if after the words "lost or mislaid," there were inserted the words

"or if the application is for the grant of a licence, has been wilfully withheld by the holder thereof."

For sect. 2 of 5 & 6 Vict. c. 44, see p. 44. The copy, or rather duplicate, is received for the purpose of indorsing a transfer upon it. From the words "if the application is for the *grant* of a licence," this section appears to be limited in its application to the case, provided for by sect. 14 of the Act of 1828, where the outgoing tenant has neglected to renew, as in that case the transfer is in the nature of a grant, the old licence having expired, and the transfer being made *nunc pro tunc*.

Renewals.

42. Where a licensed person applies for the renewal of his licence the following provisions shall have effect:

Non-attendance of applicant.

(1.) He need not attend in person at the general annual licensing meeting, unless he is required by the licensing justices so to attend:

Notice of opposition.

(2.) The justices shall not entertain any objection to the renewal of such licence, or take any evidence with respect to the renewal thereof, unless written notice of an intention to oppose the renewal of such licence has been served on such holder not less than seven days before the commencement of the general annual licensing meeting: provided that the licensing justices may, notwithstanding that no notice has been given, on an objection being made, adjourn the granting of any licence to a future day, and require the attendance of the holder of the licence on such day, when the case will be heard and the objection considered, as if the notice hereinbefore prescribed had been given:

Evidence to be on oath.

(3.) The justices shall not receive any evidence with respect to the renewal of such licence which is not given on oath.

Discretion of justices.

Subject as aforesaid, licences shall be renewed and the powers and discretion of justices relative to such renewal shall be exercised as heretofore.

It would seem that if an applicant fail to attend after a notice of opposition has been served upon him under sub-sect. 2, renewal may be refused in his absence, although his attendance may not have been required by the justices under sub-sect. 1. On the other hand, even if his attendance has been required by the justices, the renewal cannot be refused unless notice of opposition has been given, because the justices may "not entertain any objection to the renewal" without such a notice. There is no necessity that the adjournment under the proviso to the second sub-section should be for seven days.

In event of an objection being made by one of the justices

themselves of his own knowledge of a particular case, the objecting justice may and ought to be sworn. (See Best on Evidence, 4th ed., p. 270.) When the conditions precedent to the entertaining of an objection under this section have been fulfilled, the discretion of the justices with regard to the general public-house licence is absolute, renewals being on the same footing with new licences under the Act of 1828 (p. 31), while with regard to the special liquor licences the discretion is subject to certain qualifications; (for which see Wine and Beerhouse Act, 1869, ss. 8, 19, pp. 71, 76.)

For forms of requisition and notice of opposition, see Appendix.

37 & 38 Vict. c. 49. Requisition to attend for special cause personal.

[Act of 1874, s. 26. Whereas by section forty-two of the principal act it is enacted that a licensed person applying for the renewal of his licence need not attend in person at the general annual licensing meeting, unless he is required by the licensing justices so to attend: be it enacted, that such requisition shall not be made, save for some special cause personal to the licensed person to whom such requisition is sent.

It shall not be necessary to serve copies of notices of any adjournment of a general annual licensing meeting on holders of licences or applicants for licences who are not required to attend at such adjourned annual general licensing meeting.

A notice of an intention to oppose the renewal of a licence served under section forty-two of the principal act shall not be valid, unless it states in general terms the grounds on which the renewal of such licence is to be opposed.]

This section seems intended to prevent requisitions for personal attendance being given to licence-holders, except in cases when it may be desired by the justices to administer a caution.

The "special cause personal to the licensed person," would not appear confined merely to such cases as convictions, but include all reasons specially affecting the individual or his house, as, for instance, when the house has fallen out of repair.

Act of 1872—*contd.* Procedure on confirmation. Limit of opposition.

43. Any person who appears before the licensing justices and opposes the grant of a new licence, and no other person, may appear and oppose the confirmation of such grant by the confirming authority in counties or boroughs; and the confirming authority may award such costs as they shall deem just to the party who shall succeed in the proceedings before them. In a county the justices in quarter sessions assembled, and in a borough the borough justices, shall make rules as to the proceedings to be adopted for confirmation of new licences and the costs to be incurred in any such

proceedings, and the person by whom such costs are to be paid.

Any person, it would seem, may oppose the grant of a new licence in the first instance. Upon an appeal against a refusal to grant a licence, it has been held that fresh evidence may be given. (*R.* v. *Pilgrim*, L. R., 6 Q. B. 89; 40 L. J., M. C. 3.) There seems nothing to prevent that rule applying to confirmations, so long as the opposing evidence is offered by the same person as originally opposed the grant. Notwithstanding that the confirmation of every new licence, which is in the nature of an appeal against granting it, is required by this act, the right of appeal against a refusal to grant a new licence is now entirely taken away. (See repealing schedule of Act of 1872, and sect. 27 of Act of 1874.) For the power of a joint committee to make rules under this section, see s. 25 of the Act of 1874, p. 126.

No licence to be granted to person declared disqualified.

44. No licence shall be granted under the Intoxicating Liquor Licensing Acts to any person or in respect of any premises declared by or in pursuance of any of the Intoxicating Liquor Licensing Acts or this act to be disqualified persons or disqualified premises during the continuance of such disqualification. Any licence held by any person so disqualified, or attached to premises so disqualified, shall be void.

The Intoxicating Liquors Licensing Acts are defined in sect. 74 as the Act of 1828 and its amending act and the acts of 1869 and 1870.

Theoretically, there appears to be nothing in law to prevent a person disqualified for an excise licence, such as a felon under the Beer Acts (see p. 63), from obtaining the magistrates' licence.

45. Premises to which at the time of the passing of this act no licence under the acts recited in the Wine and Beerhouse Act, 1869, authorizing the sale of beer or wine for consumption thereupon is attached, shall not be subject to any of the provisions now in force prescribing a certain rent or value or rating as a qualification for receiving any such licence.

Value qualification of premises licensed after Act of 1872 for the sale of liquor to be drunk thereupon.

Premises not at the time of the passing of this act licensed for the sale of any intoxicating liquor for consumption thereupon shall not be qualified to receive a licence authorizing such sale, unless the following conditions are satisfied :

(*a.*) The premises, unless such premises are a railway refreshment-room, shall be of not less than the following annual value :

In metropolis or town of 100,000 inhabitants.

If situated within the city of London or the liberties thereof, or any parish or place subject to the jurisdiction of the

Metropolitan Board of Works, or within the four mile radius from Charing Cross, or within the limits of a town containing a population of not less than one hundred thousand inhabitants, fifty pounds per annum ; or if the licence do not authorize the sale of spirits, thirty pounds per annum :

In town of 10,000 inhabitants.

If situated elsewhere and within the limits of a town containing a population of not less than ten thousand inhabitants, thirty pounds per annum ; or if the licence do not authorize the sale of spirits, twenty pounds per annum :

Elsewhere.

If situated elsewhere and not within any such town as above mentioned, fifteen pounds per annum ; or if the licence do not authorize the sale of spirits, twelve pounds per annum :

Structural adaptation.

(*b.*) The premises shall be, in the opinion of the licensing authority, structurally adapted to the class of licence for which a certificate is sought: provided that no house, not licensed at the time of the passing of this act for the sale of any intoxicating liquor for consumption on the premises, shall be qualified to have a licence attached thereto authorizing such sale, unless such house shall contain, exclusive of the rooms occupied by the inmates of such house, if the licence authorize the sale of spirits, two rooms, and if the licence do not authorize the sale of spirits, one room, for the accommodation of the public.

Number of rooms.

Mann's case.

The meaning of this and the following section is commented on in the case of *R.* v. *Mann* (L. R., 8 Q. B. 235; 42 L. J., M. C. 35; 27 L. T., N. S. 847), in which it was decided that none of the qualifications prescribed by either of the sections apply to houses licensed as "public houses" under the Act of 1828 before the passing of the Act of 1872. Before the latter act public houses did not require any value qualification at all.

The first paragraph of the section appears to be intended to repeal the value qualifications of premises licensed for the sale of liquors to be drunk thereupon, so far as new licences are concerned. (But see the observations of Lush, J., in *R.* v. *Mann*, *ubi sup.*)

The rest of the section provides new value qualifications for all premises licensed for the sale of liquors to be drunk thereupon, whether under the Act of 1828 or 1869, after the passing of the Act of 1872.

Raising of qualification under Wine and Beerhouse Acts.

46. Whereas in certain cases a licence under the Wine and Beerhouse Acts, 1869 and 1870, is not to be granted unless the house and premises in respect of which such licence is granted are of such rent and value or are rated to the poor-rate on a rent or annual value of such amount as is respectively in that behalf stated in the acts recited in the Wine and Beerhouse Act, 1869; and it is expedient to substitute in such cases "annual value" for the said rent, value or rating, and to provide for the ascertaining the annual value of such house and premises: be it therefore enacted that in cases not provided for by the last preceding section—

"Annual value" to be substituted for rateable value.

A licence under the Wine and Beerhouse Acts, 1869 and 1870, shall not be granted in respect of any premises which are not, in the opinion of the licensing justices who grant such licence, of such annual value as is mentioned in that behalf in the acts recited by the Wine and Beerhouse Act, 1869; and those acts shall be construed as if "annual value" were therein substituted for "rent," "value," "rated on a rent or annual value," and other like expressions.

This section provides by reference to former acts a value qualification for all licences for the sale of liquors not to be drunk on the premises, granted under the Act of 1869, and also for licences for the sale of liquors to be drunk on the premises, if originally granted before 10 Aug. 1872.

For the value qualification for beer licences, see 3 & 4 Vict. c. 61, s 1, p. 62; for the refreshment-house wine licence, see 23 Vict. c. 27, s. 8, p. 68; for the beer-dealer's retail beer licence, see 33 & 34 Vict. c. 29, s. 10, and also 3 & 4 Vict. c. 61, s. 1, pp. 62, 65.

Ascertainment of annual value.

47. The licensing justices shall take such means as may seem to them best for ascertaining the annual value of any premises for the purposes of this act, and may, if they think fit, order a valuation to be made of such premises by a competent person appointed by them for the purpose, and may order the costs of such valuation to be paid by the applicant for a licence.

Definition of annual value.

The annual value of premises for the purposes of this act shall be the annual rent which a tenant might be reasonably expected, taking one year with another, to pay for the same, if he undertook to pay all tenant's rates and taxes, and tithe commutation rentcharge (if any), and if the landlord undertook to bear the cost of the repairs and insurance and other expenses (if any) necessary to maintain the premises in a state to command the said rent, and if no licence

were granted in respect thereof; but no land shall be included in such premises other than any pleasure grounds or flower or kitchen garden, yard, or curtilage usually held and occupied and used by the persons residing in and frequenting the house.

It was held under sect. 1 of 3 & 4 Vict. c. 61 (see p. 62), that part of a house used for other purposes than the sale of beer, such as for the sale of groceries, might be included in the calculation of value. (*Garretty* v. *Potts*, L. R., 6 Q. B. 86.)

Forms.

48. The following regulations shall be made with respect to licences:

New licences. (1.) Every licence granted after the commencement of this act shall be in such form as may from time to time be prescribed by a secretary of state:

Renewals. (2.) A renewal of a licence may be made by an indorsement on the licence, or by the issue of a copy of the old licence, but in the latter case there shall be indorsed on such copy all convictions made within the previous five years which are indorsed on the old licence.

Excise forms. The commissioners of inland revenue may alter the form of any licence granted by them for the sale of intoxicating liquors, in such manner as they may think expedient, for the purposes of bringing such form into conformity with the law for the time being in force.

For the forms of licence issued by the Home Office under this section, see Appendix.

Before 1872, statutory forms were used, as provided in the schedules to the Acts of 1828 and 1869 respectively.

Six-day licence.

49. Where on the occasion of an application for a new licence or transfer or renewal of a licence which authorizes the sale of any intoxicating liquor for consumption on the premises, the applicant, at the time of his application, applies to the licensing justices to insert in his licence a condition that he shall keep the premises in respect of which such licence is or is to be granted closed during the whole of Sunday, the justices shall insert the said condition in such licence.

Holder to close all Sunday.

The holder of a licence in which such condition is inserted (in this act referred to as a six-day licence) shall keep his premises closed during the whole of Sunday, and the provisions of this act with respect to the closing of licensed premises during certain hours on Sunday shall apply to the premises in respect of

which a six-day licence is granted as if the whole of Sunday were mentioned in those provisions instead of certain hours only.

The holder of a six-day licence may obtain from the commissioners of inland revenue any licence granted by such commissioners, which he is entitled to obtain in pursuance of such six-day licence, upon payment of six seventh parts of the duty which would otherwise be payable by him for a similar licence not limited to six days ; and if he sell any intoxicating liquor on Sunday he shall be deemed to be selling intoxicating liquor without a licence.

Notice by holder of six-day licence.

The notice which a licensed person is required to keep painted or fixed on his premises shall, in the case of a licence under this section, contain words indicating that such licence is for six days only. In calculating the amount to be paid for a six-day licence any fraction of a penny shall be disregarded.

It might perhaps appear from the second paragraph of this section that the proviso in favour of travellers is applicable to the six-day licence. The third paragraph however forbids any sale of liquor on pain of being deemed to be selling without licence ; as to the penalties for which, see s. 3, p. 80.

37 & 38 Vict. c. 49.

Early-closing licence.

[Act of 1874, s. 7. Where, on the occasion of any application for a new licence, or the removal or renewal of a licence which authorizes the sale of any intoxicating liquor for consumption on the premises, the applicant applies to the licensing justices to insert in his licence a condition that he shall close the premises in respect of which such licence is or is to be granted one hour earlier at night than that at which such premises would otherwise have to be closed, the justices shall insert the said condition in such licence.

Holder to close one hour earlier.

The holder of a licence in which such condition is inserted (in this act referred to as an early-closing licence) shall close his premises at night one hour earlier than the ordinary hour at which such premises would be closed under the provisions of this act, and the provisions of this act and the principal act shall apply to the premises as if such earlier hour were the hour at which the premises are required to be closed.

The holder of an early-closing licence may obtain from the commissioners of inland revenue any licence granted by such commissioners which he is entitled to obtain in pursuance of such early-closing licence, upon payment of a sum representing six-sevenths of the duty which would otherwise be payable by him for a similar

licence not limited to such early closing as aforesaid. In calculating the six-sevenths fractions of a penny shall be disregarded.

Notice by holder of early closing licence.

The notice which a licensed person is required by section eleven of the principal act to keep painted or fixed on his premises shall, in the case of an early-closing licence, contain such words as the licensing justices may order for giving notice to the public that an early-closing licence has been granted in respect of such premises.

For sect. 11 of the principal act, see p. 87.

Remission of duty.

Sect. 8. A person who takes out a licence containing conditions rendering such licence a six-day licence, as well as an early-closing licence, shall be entitled to a remission of two-sevenths of the duty.]

Act of 1872—*contd.*

Removals of licences.

50. Licences may be removed from one part of a licensing district to another part of the same district, or from one licensing district to another licensing district within the same county, in manner following:

The application for an order sanctioning removal shall be made by the person desiring to be the holder of the licence when removed, and shall be made at a general annual licensing meeting, or any adjournment thereof, to the justices authorized to grant new licences in the licensing district in which the premises are situated to which the licence is to be removed.

Notice of application for removal.

Notice of the intended application shall be given in the same manner as notice is given of an application for the grant of a new licence.

A copy of the notice shall be personally served upon or sent by registered letter to the owner of the premises from which the licence is to be removed, and the holder of the licence, unless he is also the applicant.

The justices to whom the application is made shall not make an order sanctioning such removal unless they are satisfied that no objection to such removal is made by the owner of the premises to which the licence is attached, or by the holder of the licence, or by any other person whom such justices shall determine to have a right to object to the removal.

Subject as aforesaid, such justices shall have the same power to make an order sanctioning such removal as they have to grant new licences; but no

such order shall be valid unless confirmed by the confirming authority of the licensing district.

By the Licences Suspension Act, 1871 (34 & 35 Vict. c. 88, s. 2), like powers of removal were given to the justices, "if in their opinion it should be necessary in order to meet the wants of the neighbourhood" to which the removal was proposed to be made. By this section the justices are empowered to determine what persons have a right to object, and the objection is made fatal to the removal, if the right to make it be allowed. The right must be a legal right, so that a rival licence-holder (see *R.* v. *Middlesex*, 3 B. & Ad. 938) or the owner of a neighbouring house would have no right to object. The decision of the magistrates on this point is a decision on a point of law, not of fact.

Legal Proceedings.

Summary proceedings for offences.

51. Except as in this act otherwise expressly provided, every offence under this act may be prosecuted, and every penalty and forfeiture may be recovered and enforced, in manner provided by the Summary Jurisdiction Act, 1848, subject to the following provisions:

Constitution of court.

(1.) The court of summary jurisdiction, when hearing and determining an information or complaint, other than in a case where the offence charged is that of being found drunk in any highway or other public place, or any licensed premises, shall be constituted either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of a stipendiary magistrate, or some other officer for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace, and sitting alone or with others at some court or other place appointed for the administration of justice:

Scale of terms of imprisonment.

(2.) Where the court of summary jurisdiction orders that a distress shall be made in default of payment of any penal sum exceeding five pounds, including under that expression costs actually adjudged in respect of an offence, the court may order that in default of the said sum being paid as directed, the person liable to pay the same shall be imprisoned for any term not exceeding the period specified in the following scale:

For any sum exceeding five pounds but not exceeding ten pounds, three months;

For any sum exceeding ten pounds but not exceeding thirty pounds, four months;
For any sum exceeding thirty pounds but not exceeding fifty pounds, six months;
For any sum exceeding fifty pounds, one year:

Description of offence.

(3.) The description of any offence under this act in the words of such act, or in similar words, shall be sufficient in law;

Burden of proof.

(4.) Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence in this act, may be proved by the defendant, but need not be specified nor negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or complainant; and in all cases of summary proceedings under this act, the defendant and his wife shall be competent to give evidence:

Defendant may give evidence.

Forfeitures.

(5.) All forfeitures shall be sold or otherwise disposed of in such manner as the court may direct, and the proceeds of such sale or disposal (if any) shall be applied in the like manner as penalties, but the court may direct that such proceeds may be applied in the first instance in paying the expenses of and incidental to any search and seizure which resulted in such forfeiture:

Inland revenue.

(6.) Penalties and forfeitures under this act shall not, for the purpose of any act respecting the application of such penalties, or the costs, charges, and expenses attending proceedings for recovery of such penalties or of forfeitures, be deemed to be penalties or forfeitures under any act relating to the inland revenue.

Any officer appointed by the commissioners of inland revenue may sue for any penalties under this act, and when so sued for any penalties which may be recovered shall be applied in the manner in which excise penalties are for the time being applicable by law.

Costs.

Where under this act any sum for costs (other than costs upon a conviction or order of dismissal of an information) or for compensation, or both, is ordered or awarded to be paid by any person, the amount thereof shall be recovered in manner directed by the Summary

Jurisdiction Act, 1848, for the recovery of costs awarded upon the dismissal of an information or complaint.

The Summary Jurisdiction Act, 1848 (Jervis's Act) is 11 & 12 Vict. c. 43. Under sect. 12 of that act, one justice may convict of the offence of drunkenness excepted in subs. 1 of the present section. The jurisdiction of one justice to convict of being drunk and disorderly, and of being drunk while driving, under 10 & 11 Vict. c. 89, ss. 29, 61, is impliedly repealed by the same subsection.

Small penalties.

Penalties not exceeding 5*l.* are provided for by the Small Penalties Act, 1865 (28 & 29 Vict. c. 127), which by sect. 4 enacts that where "upon summary conviction an offender may be adjudged to pay a penalty not exceeding 5*l.*, such offender, in case of non-payment thereof, may, without any warrant of distress, be committed to prison for any term not exceeding," if the penalty do not exceed 10*s.*, seven days; if the penalty exceed 10*s.*, and do not exceed 1*l.*, fourteen days; if the penalty exceed 1*l.*, but do not exceed 2*l.*, one month; and if the penalty exceed 2*l.*, but do not exceed 5*l.*, two months. Penalties under 5*l.*, it will be observed, may be enforced without warrant of distress; in other cases a warrant must issue first (subs. 2; 11 & 12 Vict. c. 43, ss. 19, 21).

For the question whether keeping a brothel is an offence under this act, see note to sect. 15, p. 92.

Burden of proof.

The latter part of subsect. 3 is similar to sect. 14 of the Summary Jurisdiction Act, which provides that "if the information or complaint shall negative any exemption, exception, proviso or condition in the statute on which it shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same." The subsection in this act not only makes it unnecessary for the informant to negative in the proof an exception which is negatived in the information, but makes it unnecessary for him to negative the exception in the information, which was necessary at common law. (*Jones* v. *Axem*, 1 Ray. 119; *R.* v. *Pratten*, 6 T. R. 559; *R.* v. *Jarvis*, 1 Burr. 153, per Lord Mansfield). It will be seen that the words "excuse or qualification" are new; and it was said by Blackburn, J., in *Roberts* v. *Humphreys*, 42 L. J., M. C. 150, that the alteration was suggested by certain decisions [*e. g.*, *Copley* v. *Burton*, 39 L. J., M. C. 141,] that the burden of proof was on the informant in the case of sale in closing hours to an alleged traveller, and was intended to shift the burden of proof upon the defendant.

Evidence of defendant.

It will be seen that subs. 4 makes a defendant and his wife competent to give evidence. This is the first instance in English law of such evidence being admitted in criminal proceedings. For the application of the principle to civil proceedings, see 14 & 15 Vict. c. 99, s. 3. Before the act, it had been questioned whether or not a publican was competent to give evidence for himself under sect. 21 of the Act of 1828, and clearly laid down that he was not. (*Parker* v. *Green*, 31 L. J., M. C. 133.)

Costs.

The last paragraph of the section refers particularly to the costs which may be given under sect. 35 upon an opposition to a confirmation. Sect. 26 of the Summary Jurisdiction Act, 1848, allows costs upon the dismissal of an information to be enforced by distress, and imprisonment for one month.

Appeal to quarter sessions against order or conviction.

52. If any person feels aggrieved by any order or conviction made by a court of summary jurisdiction, the person so aggrieved may appeal therefrom, subject to the conditions and regulations following :

Limit of time.

(1.) The appeal shall be made to the next court of quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days after the decision of the court from which the appeal is made :

Notice by appellant.

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof :

Recognizance.

(3.) The appellant, immediately after such notice, shall enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or shall give such other security by deposit of money or otherwise as the justice may allow :

Discharge of appellant from custody.

(4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody :

Adjournment of court.

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may

Costs.

also make such order as to costs to be paid by either party as the court thinks just.

For appeal against refusal to renew or transfer a licence, see Act of 1828, ss. 27, 28, 29 (pp. 48—51), which are repealed by this act except so far as they concern renewals and transfers. Orders of exemption, and closing orders, are not orders within this section, not being made by a court of summary jurisdiction. Justices in petty sessions may be compelled to state a point of law for a superior court under 20 & 21 Vict. c. 43, "upon the determination of an information or complaint in a summary way," but under no other circumstances, such as the refusal of a licence. (See *West* v. *Potts*, note to *Garretty* v. *Potts*, L. R., 6 Q. B. 88, where a case so stated by justices was ordered to be

struck out.) The court of quarter sessions may state a case under any circumstances. See also Baines' Act, 12 & 13 Vict. c. 45.

Continuance of licence pending an appeal against refusal to renew.

53. Where the justices refuse to renew a licence, and an appeal against such refusal is duly made, and such licence expires before the appeal is determined, the commissioners of inland revenue may, by order, permit the person whose licence is refused to carry on his business during the pendency of the appeal upon such conditions as they think just; and, subject to such conditions, any person so permitted may, during the continuance of such order, carry on his business in the same manner as if the renewal of the licence had not been refused.

Where a licence is forfeited on or in pursuance of a conviction for an offence, and an appeal is duly made against such conviction, the court by whom the conviction was made may, by order, grant a temporary licence to be in force during the pendency of the appeal upon such conditions as they think just.

For the procedure on appeal against refusal to renew, see sect. 27 of the Act of 1828, p. 48.

Certiorari excluded as to convictions and orders.

54. No conviction or order made in pursuance of this act, originally or on appeal, relative to any offence, penalty, forfeiture, or summary order, shall be quashed for want of form, or, if made by a court of summary jurisdiction, be removed by certiorari or otherwise, either at the instance of the crown or of any private party, into any superior court. Moreover, no warrant of commitment in any such matter shall be held void by reason of any defect therein, provided that there is a valid conviction to maintain such warrant, and it is alleged in the warrant that the party has been convicted.

Certiorari as to licences.

There is no exclusion of certiorari in reference to the grant of licences, but it may be doubted whether the writ will lie to bring up a new licence, the grant of which is rather of an administrative than a judicial character. Upon renewals, however, a more judicial character is now impressed by sect. 42, and the effect of that section would seem to be to make the proceedings under it removable. It has been held that certiorari does not lie to bring up a beer licence granted by the excise. (*R.* v. *Salford*, 18 Q. B. 687; 21 L. J., M. C. 223; 16 Jur. 907.) Certiorari is a discretionary writ. (*R.* v. *Bass*, 5 T. R. 252.)

In *R.* v. *Mann* (L. R., 8 Q. B. 235; 42 L. J., M. C. 35; 27 L. T., N. S. 847), the renewal of a licence was brought up on certiorari in order to quash an illegal condition, but the court refused to quash the illegal condition.

Record of convictions upon licence.

55. With respect to the record of convictions of licensed persons for offences under this act committed by them as such, the following provisions shall have effect in cases where this act requires the conviction to be recorded on the licence; that is to say,

Production of licence.

(1.) The court before whom any licensed person is accused shall require such person to produce and deliver to the clerk of the court the licence under which such person carries on business, and the summons shall state that such production will be required:

Particulars of record.

(2.) If such person is convicted, the court shall cause the short particulars of such conviction, and the penalty imposed, to be endorsed on his licence before it is returned to the offender:

Entry in register.

(3.) The clerk to the licensing justices shall enter the particulars respecting such conviction, or such of them as the case may require, in the register of licences, kept by him under this act:

Notice to clerk to licensing justices.

(4.) If the clerk to the court be not the clerk to the licensing justices, he shall send forthwith to the last-mentioned clerk notice of such conviction, and of the particulars thereof:

Notice of forfeiture.

(5.) Where the conviction of any such person has the effect of forfeiting the licence, or of disqualifying any person or premises for the purposes of this act, the licence shall be retained by the clerk of the court, and notice of such forfeiture and disqualification shall be sent to the licensing officer of the district, and if the clerk to the court is not the clerk to the licensing justices to such last-mentioned clerk, together with the forfeited licence.

By sect. 64, a penalty not exceeding ten pounds is imposed on a person not producing his licence when required. By sect. 33, an omission to record convictions "directed to be recorded," may be supplied upon proper evidence. "Licensing officer" is defined as the officer appointed by the inland revenue to superintend the issue of licences in any place (s. 74).

Notice to owner of convictions tending to disqualify premises.

56. Where any tenant of any licensed premises is convicted of an offence against this act, and such offence is one the repetition of which may render the premises liable to be disqualified from receiving a licence for any period, it shall be the duty of the clerk of the

licensing justices to serve, in manner provided by this act, notice of every such conviction on the owner of the premises.

Where any order of a court of summary jurisdiction declaring any licensed premises to be disqualified from receiving a licence for any period has been made, the court shall cause such order to be served on the owner of such premises, where the owner is not the occupier, with the addition of a statement that the court will hold a petty sessions at a time and place therein specified, at which the owner may appear and appeal against such order on all or any of the following grounds, but on no other grounds :

Appeal by owner against order of disqualification on limited grounds.

(*a.*) That notice, as required by this act, has not been served on the owner of a prior offence which on repetition renders the premises liable to be disqualified from receiving a licence at any period ; or

(*b.*) That the tenant by whom the offence was committed held under a contract made prior to the commencement of this act, and that the owner could not legally have evicted the tenant in the interval between the commission of the offence, in respect of which the disqualifying order was made, and the receipt by him of the notice of the immediately preceding offence which on repetition renders the premises liable to be disqualified from receiving a licence at any period; or

(*c.*) That the offence in respect of which the disqualifying order was made occurred so soon after the receipt of such last-mentioned notice that the owner, notwithstanding he had legal power to evict the tenant, could not with reasonable diligence have exercised that power in the interval which occurred between the said notice and the second offence.

Cancellation of order disqualifying premises.

If the owner appear at the time and place specified, and at such sessions, or any adjournment thereof, satisfy the court that he is entitled to have the order cancelled on any of the grounds aforesaid, the court shall thereupon direct such order to be cancelled, and the same shall be void.

This section calls the application by the owner to cancel an order of disqualification an appeal, though it is not an appeal in the strict sense. Still, it would seem that a special "appeal" being expressly given by this section, the owner cannot, if unsuccessful before the justices below, appeal to quarter sessions under the general powers of sect. 52.

37 & 38 Vict. c. 49. Temporary transfer to owner in case of forfeiture.

[Act of 1874, s. 15. Where any licensed person is convicted for the first time of any one of the following offences,—

1. Making an internal communication between his licensed premises and any unlicensed premises;
2. Forging a certificate under the Wine and Beer-house Acts, 1869 and 1870;
3. Selling spirits without a spirit licence;
4. Any felony;

and in consequence either becomes personally disqualified or has his licence forfeited, there may be made by or on behalf of the owner of the premises an application to a court of summary jurisdiction for authority to carry on the same business on the same premises until the next special sessions for licensing purposes, and a further application to such next special sessions for the grant of a licence in respect of such premises, and for this purpose the provisions contained in the Intoxicating Liquor Licensing Act, 1828, with respect to the grant of a temporary authority and to the grant of licences at special sessions, shall apply as if the person convicted had been rendered incapable of keeping an inn, and the person applying for such grant was his assignee.

For offence (1) see p. 86, for (2) see p. 75, and for (3) and (4) see p. 63. For the provisions of the Act of 1828 as to transfer at special sessions to the assignee of a person rendered incapable of keeping an inn, see sect. 14 of that act, p. 40. The power to grant the temporary authority, although not given by the Act of 1828, but by the Amending Act, 5 & 6 Vict. c. 44 (p. 42), would seem to be included in this section.

Entry of "owner" upon register.

Sect. 29. Any person possessing an estate or interest in premises licensed for the sale of intoxicating liquors, whether as owner, lessee, or mortgagee, prior or paramount to that of the immediate occupier, shall, on payment of a fee of one shilling to the clerk of the licensing justices, be entitled to be registered as owner or one of the owners of such premises: provided, that when such estate or interest is vested in two or more persons jointly, one only of such persons shall be registered as representing such estate or interest.]

The register of licences prescribed by sect. 36 of the Act of 1872 (p. 119), is directed to contain the name of the owner; and by the same section it is the duty of persons applying for licences to state the name of the owner. Sect. 56 of that act contained a provision, repealed by the Act of 1874, that the courts of quarter sessions should make rules as to the registration of "any person other than the owner interested in any licensed premises

as mortgagee *or otherwise.*" The present section more accurately defines the term "owner," and gives a statutory title to registration.

Act of 1872—*contd.*

Conviction of more than one offence in one day.

57. Where a licensed person is convicted of more offences than one committed on the same day, the convictions for which are by this act directed to be recorded on his licence, the court by whom he is convicted may, in their discretion, order that one or some only of such convictions shall be so recorded.

Evidence of endorsements and register.

58. The registers of licences kept in pursuance of this act shall be receivable in evidence of the matters required by this act to be entered therein. Every endorsement upon a licence, and every copy of an entry made in the registers of licences in pursuance of this act, purporting to be signed by the clerk to the licensing justices and (in the case of a copy) to be certified to be a true copy, shall be evidence of the matters stated in such endorsement and entry, without proof of the signature or authority of the person signing the same.

For the register of licences see sect. 36, p. 119.

Saving for other acts.

59. Nothing in this act shall prevent any person from being liable to be indicted or punished under any other act, or otherwise, so that he be not punished twice for the same offence.

Miscellaneous.

Disqualification of justices as brewers, &c.

60. No justice shall act for any purpose under this act, or under any of the Intoxicating Liquor Licensing Acts, except in cases where the offence charged is that of being found drunk in any highway or other public place, whether a building or not, or on any licensed premises, or of being guilty while drunk of riotous or disorderly conduct, or of being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam-engine, or of being drunk when in possession of loaded fire-arms, who is or is in partnership with or holds any share in any company which is a common brewer, distiller, maker of malt for sale, or retailer of malt or of any intoxicating liquor in the licensing district or in the district or districts adjoining to that in which such justice usually acts; and no justice shall act for any purpose under this act, or under any of the Intoxicating Liquor Acts, in respect of any premises in the profits to which such justice is interested, or of which he is wholly or partly the owner, lessee, or occupier, or for the owner, lessee, or occupier of which he is manager or agent.

Penalty on disqualified justice acting.

Any justice hereby declared not to be qualified to act under this act, who knowingly acts as a justice for any of the purposes of this act, shall for every such offence be liable to a penalty not exceeding one hundred pounds, to be recovered by action in one of her Majesty's Superior Courts at Westminster :

Provided that—

(1.) No justice shall be disqualified under this section to act in respect of any premises by reason of his having vested in him a legal interest only, and not a beneficial interest, in such premises or the profits thereof :

(2.) No justice shall be liable to a penalty for more than one offence committed by him under this section before the institution of any proceedings for the recovery of such penalty :

(3.) No act done by any justice disqualified by this section shall by reason only of such disqualification be invalid.

Sect. 6 of the Act of 1828, which contained provisions corresponding to the above, is repealed by the present act. This section extends the disqualifications to the hearing of charges against publicans, and adds the disqualification of the shareholder. Makers of malt for the purpose of feeding animals were specially excepted from the disqualifications imposed upon "makers of malt for sale" in the Act of 1828, by 27 Vict. c. 10, s. 11, still unrepealed. This exception appears not to be repealed by this section, using as it does the same expression "makers of malt for sale."

Piers and tidal rivers to be within jurisdiction of justices.

61. For all the purposes of this act any pier, quay, jetty, mole, or work extending from any place within the jurisdiction of any licensing justices or court of summary jurisdiction into or over any part of the sea, or any part of a river within the ebb and flow of the tide, shall be deemed to be within the jurisdiction of such justices and court.

For the purpose of jurisdiction in any proceeding under this act, any river or water which runs between or forms the boundary of two or more licensing districts, or of the jurisdiction of two or more courts of summary jurisdiction, shall be deemed to be wholly within each such licensing district and the jurisdiction of each of such courts.

Packet-boats.

At common law justices have no jurisdiction beyond their borough or county, and therefore not beyond the foreshore. Packet-boats may take out an excise licence for the sale of liquor to passengers under 9 Geo. 4, c. 47, s. 1, which licence is exempted from the operation of the Act of 1872 by sect. 72, subs. 5, p. 151. No "wine, spirits, or other exciseable liquor" may be sold by retail on board of any vessel "moored or lying at anchor" within the

Metropolitan Police District on Sundays, &c. "during the hours and times on which licensed victuallers are by law obliged to keep their houses closed" (5 & 6 Vict. c. 44, s. 5).

Evidence of sale or consumption of liquor.

62. In proving the sale or consumption of intoxicating liquor for the purpose of any proceeding relative to any offence under this act, it shall not be necessary to show that any money actually passed or any intoxicating liquor was actually consumed, if the court hearing the case be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of intoxicating liquor was about to take place; and proof of consumption or intended consumption of intoxicating liquor on premises to which a licence under this act is attached, by some person other than the occupier of or a servant in such premises, shall be evidence that such liquor was sold to the person consuming, or being about to consume, or carrying away the same by or on behalf of the holder of such licence.

Sect. 13 of the Wine and Beerhouse Act, 1869, had a similar provision, repealed by the present act.

Avoidance of excise licence on forfeiture of magistrates' licence.

63. Where a licence is forfeited in pursuance of this act, or becomes void under any of the provisions of this act, any licence for the sale of intoxicating liquors granted by the commissioners of inland revenue to the holder of such licence shall be void.

The excise licence is in cases where a magistrates' licence is required obtainable on production of the magistrates' licence, and if the magistrates' licence were at the time of the production valid, the excise licence would run on for the period of its currency, notwithstanding that the magistrates' licence became forfeited in the meantime. This section prevents that anomaly. Section 21 of the Act of 1828, now repealed, had a clause with the same object. For the forfeitures under this act, see sect. 30 and note.

Production of licence by holder, and penalty on non-production.

64. Every holder of a licence, or of an order of exemption made by a local authority in pursuance of this act, shall, by himself, his agent, or servant, produce such licence or order within a reasonable time after the production thereof is demanded by a justice of the peace, constable, or officer of inland revenue, and deliver the same to be read and examined by him. Any person who acts in contravention of this section shall be liable to a penalty not exceeding ten pounds.

Population ascertained.

65. The population of any area for the purposes of this act shall be ascertained according to the last published census for the time being.

Part of penalty may be awarded to police fund.

66. Any part not exceeding a moiety of any penalty recovered under this act may, if the court shall so direct, be paid to the superannuation fund of the police

establishment within whose jurisdiction the offence in respect of which such penalties are imposed shall have occurred.

67. *Minimum penalty for each offence of licensed person. Repealed, Act of* 1874, *s.* 12.

37 & 38 Vict. c. 49. Minimum penalty.

[Act of 1874, s. 12. The sixty-seventh section of the principal act is hereby repealed, and in lieu thereof be it enacted, that where any person holding a licence under this or the principal act is convicted of any offence against this or the principal act, or against any of the acts recited or mentioned therein, the court may not, except in the case of a first offence, reduce the penalty to less than twenty shillings, nor shall the penalty, whether of excise or police, be reduced in any case to less than the minimum authorized by any other act.]

By sect. 67 of the principal act the minimum penalty was twenty shillings for all offences of licensed persons. This section prescribes the minimum penalty in the case of a second or subsequent offence only. Where a lesser penalty than the minimum required by law is imposed, the conviction is invalid. (See Paley on Convictions, 5th ed. p. 272, citing *Whitehead* v. *R.*, 7 Q. B. 582.)

As to the minimum penalty on the sale of spirits without licence, see note to sect. 3, p. 83. Excise penalties may not be mitigated to less than one-fourth (7 & 8 Geo. 4, c. 53, s. 78), except by the commissioners of inland revenue. (*Ib.*)

Act of 1872—*contd.* Shopkeepers not to retail spirits under dealers' excise licence without a magistrates' licence.

68. No person shall sell by retail liqueurs or spirits under the authority of any retail licence which such person shall have obtained as a wholesale spirit dealer from the commissioners of inland revenue, except in premises occupied and used exclusively for the sale therein of intoxicating liquor, and which premises have no communication with the premises of nor are in any way occupied by a person who is carrying on any other trade or business, unless such person shall have first obtained from the licensing justices a licence authorizing such sale in premises not exclusively so occupied and used.

Retail spirit licence.

The spirit dealers' retail spirit licence is one of the licences commonly called "grocers' licences," and is taken out under 24 & 25 Vict. c. 21, s. 2, which thus enacts: "Any person duly licensed as a dealer in spirits in England may take out an additional licence authorizing him to sell by retail foreign or British spirits in any quantity not less than one reputed quart bottle, or as to foreign liqueurs in the bottles in which the same may have been imported, not to be drunk or consumed upon the premises; and any licensed dealer taking out such additional licence may send out or deliver any such spirits without the certificate required by law in such cases if the quantity does not exceed one gallon at a time." It would seem that this enactment does not require the sale to be in the bottle, that term being used as a measure of

capacity only. By 23 & 24 Vict. c. 114, s. 169, it is provided "that any person duly licensed as a dealer in spirits may take out an additional licence authorizing him to sell by retail any quantity (the same not being less than one reputed quart bottle or in the bottles in which the same may have been imported) of foreign liqueurs not to be drunk or consumed on the premises." The licence under this section may be conveniently termed the shopkeepers' spirit licence. It requires no confirmation (Act of 1874, s. 24, p. 126.) See also next section, and section 73.

Retail liqueur licence.

69. A licence for the sale of liqueurs or spirits by retail not to be consumed on the premises may, where such licence is required by this act, be granted in the same manner in all respects in which a licence for selling wine not to be consumed on the premises may by law be granted, and an application for such a licence shall not be refused except upon one or more of the grounds on which a certificate in respect of a licence to sell by retail beer, cider, or wine not to be consumed on the premises may be refused.

Shopkeepers' retail spirit or liqueur licence not to be refused except on special grounds.

The licence to sell beer, cider or wine not to be drunk on the premises may only be refused on grounds affecting the character of the applicant or his house (Wine and Beerhouse Act, 1869, s. 8, p. 71). On reference to that section it will be seen that one of the grounds of refusal specified in it is, that the applicant or his house "is not duly qualified as by law is required." The annual value qualifications required by sect. 45 of the present act apply only to premises "licensed for the sale of any intoxicating liquor for consumption thereon," so that the shopkeepers' retail spirit licence which authorizes sale for consumption off the premises only, requires no annual value qualification. Spirits may not be sold by retail by a person convicted of felony (33 & 34 Vict. c. 29, s. 14).

70. All notices and documents required by this act to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, until the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice or document was prepaid, and properly addressed.

Notices may be served by post.

Where any officer* or other person interested in any licensed premises is entitled to receive notice of a conviction under this act, he shall supply his address to the clerk or other person required to send such notice, and any notice sent to such address shall be deemed to be duly served; and where no notice is

* *Sic.*

supplied in pursuance of this section, all notices shall be deemed to be duly served if sent to any address which such clerk or other person in the exercise of his discretion believes to be the address of the person to whom the notice was so sent.

Service on owner.

Provided that any notice of any offence required by this act to be sent to the owner of licensed premises shall be either served personally or sent by registered letter.

This section, apparently by a slip, does not expressly require proof that the letter was actually put into the post. The clerk to the licensing magistrates of the district in which a house is situated, who is entitled to notice of convictions concerning it under sect. 55, subs. 5, may possibly be intended as "the officer" referred to in the second paragraph. But the words assume that the officer is interested in the premises, and that the person interested is a kind of officer. It seems a not improbable explanation that "officer" is a clerical error for owner, or that the word "other" should be disregarded. As to the owner's right to notice, see sect. 56.

Schedules to be part of act.

71. The schedules to this act shall be construed and have effect as part of this act.

Saving Clauses.

Savings of certain privileges, rights, &c.

72. Nothing in this act shall affect or apply to—

1. The privileges at the date of the passing of this act enjoyed by any university in England, or the respective chancellors or scholars of the same, or their successors :
2. The privileges at the date of the passing of this act enjoyed by the mayor or burgesses of the borough of St. Alban's in the county of Hertford, or their successors, or the exemption from the obligation to take out a licence as defined by this act, or a licence from the commissioners of inland revenue enjoyed by the company of the master, wardens, and commonalty of vintners of the city of London :
3. The sale of spruce or black beer :
4. The sale of intoxicating liquor by proprietors of theatres in pursuance of the acts in that behalf :
5. The sale of intoxicating liquor in packet boats, in pursuance of the acts in that behalf :
6. The sale of intoxicating liquor on special occasions in pursuance of the provisions in that behalf enacted :
7. The sale of spirits in canteens, in pursuance of any act regulating the same :

8. The sale of medicated or methylated spirits, or spirits made up in medicine and sold by medical practitioners or chemists and druggists:
9. The sale of intoxicating liquor by wholesale:
10. Any penalties recoverable by or on behalf of the commissioners of inland revenue, or any laws relating to the excise.

Universities.

The universities claiming to have distinct licensing authorities are the universities of Oxford and Cambridge. In *R.* v. *Archdall* (8 A. & E. 281) the Court of Queen's Bench refused to grant a quo warranto to the Vice-Chancellor of Cambridge for the purpose of questioning his right to grant licences.

Vintners.

By 25 Vict. c. 22, s. 16, it is provided, that no freeman of vintners shall be entitled to sell wine in more than one separate and distinct house at the same time without taking out the proper excise licence for the purpose. From the mention of "excise licence" only it would seem that the vintners need not take out a magistrates' licence even in order to sell wine in a second house, as their rights are saved under 6 Geo. 4, c. 81, the Act of 1828, and the Wine and Beerhouse Act, if they can prove their privilege extends to sale in more than one place, as the section just quoted seems to assume.

Black beer.

The licence to sell spruce or black beer is taken out by brewers, who do not brew beer of any other description nor add hops, bitter, yeast or other matter to produce fermentation. The specific gravity of the beer must be 1180 degrees (25 Vict. c. 22).

Theatres.

By 5 & 6 Will. 4, c. 39, s. 7, it is lawful for the excise authorities to grant retail licences to any person to sell beer, spirits, and wine in any theatre without the production of a licence from the magistrates. The holders of this licence are in the present section described as "proprietors," but the use of the word in a saving clause does not seem to restrict the persons to whom it may be granted.

Packet-boats.

The master or other person nominated by the owner of a packet-boat may take out a licence to sell wine, beer, spirits and tobacco to the passengers on board to be consumed during the voyage (9 Geo. 4, c. 47, s. 1). This licence may be transferred and renewed.

Special occasions.

For occasional licences, see p. 112.

Canteens.

Canteen licences are by the Annual Mutiny Acts granted by any two justices of the peace without regard to time of year or notices, or certificates required by any act, to any person holding a canteen under the proper authority of the War Office or Admiralty (37 Vict. c. 4, s. 93; 37 Vict. c. 5, s. 91).

Methylated and medicated spirits.

A licence for methylated spirits authorizes the sale of spirits mixed with one-ninth of wood naptha or methylic alcohol, or with such proportion of those ingredients as the commissioners of inland revenue direct, so as to render them unfit for use as a beverage (18 & 19 Vict. c. 38, s. 1; 24 & 25 Vict. c. 91, s. 1). Medicated spirits may be sold without licence (see 16 Geo. 2, c. 8, s. 12).

Excise licences.

73. A licence as defined by this act shall not be required for—

Wine-dealers' retail wine licence.

1. The sale of wine by retail, not to be consumed on the premises, by a wine merchant in pursuance of a wine dealers' licence granted by the commissioners of inland revenue ; or

Spirit-dealers' retail spirit and liqueur licences.

2. The sale of liqueurs or spirits by retail, not to be consumed on the premises, by a wholesale spirit dealer whose premises are exclusively used for the sale of intoxicating liquors, in pursuance of a retail licence granted by the commissioners of inland revenue, under the provisions of the twenty-fourth and twenty-fifth of her present Majesty, chapter twenty-one, intituled "An Act for granting to her Majesty certain duties of excise and stamps."

"Grocers' licences."

The licences specified in this section, together with the shopkeepers' wine licence taken out under 23 Vict. c. 27, s. 3 (p. 67), make up together the licences which are commonly called grocers' licences. Before the act the wine dealers' retail wine licence being granted under 23 Vict. c. 27, s. 3, was under the control of the magistrates, under sect. 4 of the Wine and Beerhouse Act (see p. 56). The general effect of the act upon the "grocers' licences" is that the spirit licence, if taken out by grocers, is placed under the control of the magistrates with the proviso that they may not refuse it, except upon special grounds (see s. 68); the shopkeepers' wine licence is retained under the control of the magistrates with the same proviso, and the wine-dealers' retail wine licence, formerly under the control of the magistrates with the same proviso, is now set entirely free from their control.

Definitions.

Interpretation of terms, &c.

74. In this act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them ; that is to say,

"Intoxicating Liquor Licensing Act, 1828," means the act of the ninth year of the reign of King George the Fourth, chapter sixty-one, intituled "An Act to regulate granting of licences to keepers of inns, ale-houses and victualling-houses in England," and includes the acts amending the same :

"Wine and Beerhouse Acts" means the Wine and Beerhouse Act, 1869, and the Wine and Beerhouse Act Amendment Act, 1870 :

"Intoxicating Liquor Licensing Acts."

"Intoxicating Liquors Licensing Acts" means the Intoxicating Liquor Licensing Act, 1828, and the Wine and Beerhouse Acts :

"Intoxicating liquor."

"Intoxicating liquor" means spirits, wine, beer, porter, cider, perry and sweets, and any fermented, distilled or spirituous liquor which

cannot, according to any law for the time being in force, be legally sold without a licence from the commissioners of inland revenue :

"Licence" means a licence for the sale of intoxicating liquors granted by justices in pursuance of the Intoxicating Liquor Licensing Act, 1828, including a certificate of justices granted under the Wine and Beerhouse Acts, and including a licence for the sale of sweets which is hereby authorized to be granted in the same manner as if sweets were wine, and including a licence for the retail of spirits granted to a wholesale spirit dealer by the justices in pursuance of this act : "Licence." *Sweets retail licence.*

"*New Licence.*" *Repealed, Act of* 1874. *See now sect.* 32 *of that Act,* p. 158.

"The renewal of a licence" means a licence granted at a general annual licensing meeting by way of renewal: "Renewal."

"The transfer of a licence" means a transfer made in special sessions in exercise of the power granted to justices by the fourth section of the said act of the ninth year of the reign of King George the Fourth, chapter sixty-one, intituled "An Act to regulate granting of licences to keepers of inns, ale-houses and victualling-houses in England :" "Transfer."

"Licensed person" means a person holding a licence as defined by this act : "Licensed person."

"Licensed premises" means premises in respect of which a licence as defined by this act has been granted and is in force : "Licensed premises."

"Unlicensed premises" means premises in respect of which a licence as defined by this act has not been granted or is not in force :

"Owner of licensed premises" means the person for the time being entitled to receive, either on his own account or as mortgagee or other incumbrancer in possession, the rack-rent of such premises : "Owner."

"Licensing district" means the area for which a general annual licensing meeting is held in pursuance of the Intoxicating Liquor Licensing Act, 1828 : "Licensing district."

"Licensing justices" means the justices having jurisdiction in respect of the grant of new licences in a licensing district under the last-mentioned act as amended by this act : "Licensing justices."

"Licensing officer" means any officer appointed by the commissioners of inland revenue to issue or superintend the issue of licences under this act in any place:

"Sale by retail." "Sale by retail" in respect of any intoxicating liquor means the sale of that liquor in such quantities as is declared to be sale by retail by any acts relating to the sale of intoxicating liquors:

"County." "County" does not include a county of a city or a county of a town, but means any county, riding, parts, division or liberty of a county having a separate commission of the peace and a separate court of quarter sessions:

"Borough." "Borough" means a county of a city, county of a town, city, municipal borough, cinque port and its liberties, town corporate or other place in which a general annual licensing meeting is held in pursuance of the Intoxicating Liquors (Licensing) Act, 1828, exclusive of a petty sessional division of a county:

Where a liberty of a county, as defined by this act, is not divided into petty sessional divisions, such liberty shall, so far as respects the provisions of this act with respect to the grant of new licences, stand in the same position as if it were a petty sessional division of the county in which it is geographically situate or with which it has the longest common boundary:

"Clerk of the licensing justices." "Clerk of the licensing justices" means, where the licensing district is a county or a petty sessional division of a county, the clerk of the petty sessions for such division; and where the licensing district is a county of a city, county of* town, city, municipal borough, town corporate, or other place not a county or a petty sessional division of a county, means the clerk to the justices of such county of a city, county of a town, city, borough, town corporate, or place, or other person performing analogous duties to such clerk; and where there are more persons than one in any county, petty sessional division or other place filling the office of clerk of the licensing justices as hereinbefore defined, the licensing justices shall determine by which of such persons the register of licences shall be kept:

* *Sic.*

"Town" means any parliamentary or municipal borough, Improvement Act district, local government district, or other place having a known legal boundary, and wherever two or more of the above-mentioned places occupy portions of the same area, "town" shall be taken to mean such one of such places as is the largest in area; and any premises situate in more than one town shall, for the purposes of this act, be deemed to be in such one of the towns as is the largest in area.* "Town."

"Local government district" means any area subject to the jurisdiction of a local board constituted in pursuance of the Local Government Act, 1858:

"Improvement Act district" means any area for the time being subject to the jurisdiction of any commissioners, trustees, or other persons intrusted by any Local Act, not being a Turnpike Act or Highway Act, with powers of improving, cleansing, or paving any part of such district:

"Court of summary jurisdiction" means any justice or justices of the peace, metropolitan police-magistrate, stipendiary or other magistrate, or officer by whatever name called, to whom jurisdiction is given by the act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," in this act referred to as The Summary Jurisdiction Act, 1848, and any acts amending the same: "Court of summary jurisdiction."

"Quarter sessions" includes general sessions:

"Police district" means,—

1. The city of London and the liberties thereof;
2. The metropolitan police district;
3. Any county, riding, part, division or liberty of a county, borough, city, town, place or union, or combination of places maintaining a separate police force; and all the police under one chief constable shall be deemed to constitute one force for the purposes of this definition:

* Partially repealed by Act of 1874. See ss. 32, 33 of that act, pp. 158, 160.

"Police authority."

"Police authority" means,—

1. In the city of London and the liberties thereof, the commissioner of city police;
2. In the metropolitan police district, the commissioner of police of the metropolis;
3. Elsewhere, the chief constable or head constable, or other officer by whatever name called, having the chief command of the police in the police district in reference to which such expression occurs:

Any act or thing by this act authorized to be done by the police authority may be done by any person authorized by him in that behalf;

"Secretary of State" means one of her Majesty's principal secretaries of state.

Sweets.

The sale of sweets to be drunk on the premises required a magistrates' licence before this act (see p. 66). The combined effect of the interpretation clause and the 3rd section of this act is, rather oddly, to make the sale of sweets not to be drunk on the premises require a magistrates' licence also. The third section says in effect that there shall be no sale of sweets without a magistrates' licence. The interpretation clause defines "licence" as magistrates' licence, "including a licence for the sale of sweets, which is hereby authorized to be granted in the same manner as if sweets were wine." Magistrates' licences for sweets, therefore, corresponding to the wine licences, must be applied for in all cases. These licences may be called the shopkeepers' sweets' licence, the refreshment-house sweets' licence and the wholesale sweets dealers' retail sweets' licence. In relation to wine, sweets stand very much on the same footing as cider in relation to beer, and liqueurs to spirits.

Repeal.

Repeal of acts.

75. The several acts set forth in the second schedule hereto shall be repealed to the extent to which such acts are therein expressed to be repealed, and in particular there shall be repealed so much of the Wine and Beerhouses Acts as makes such acts temporary in their duration, and the said acts shall henceforth be perpetual.

Perpetuation of Wine and Beerhouse Acts.

Provided that the repeal enacted in this act shall not affect—

(1.) Any security given before this act comes into operation:

(2.) Anything duly done before this act comes into operation:

(3.) Any right acquired or liability accrued before this act comes into operation:

(4.) Any removal of a licence or certificate in pursuance of the second section of Intoxicating Liquor Licensing Suspension Act, 1871:

(5.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this act comes into operation :

(6.) The institution of any legal proceeding or any other remedy for ascertaining, enforcing, or recovering any such liability, penalty, forfeiture, or punishment as aforesaid.

Act to apply to billiard licences under 8 & 9 Vict. c. 109, ss. 10—14.

Provided also, that in the case of persons intending to apply for billiard licences under the act of the eighth and ninth years of the reign of her present Majesty, chapter one hundred and nine, intituled "An Act to amend the law concerning games and wagers," or for the transfer of such licences, the same notices shall be given as are by this act required in the case of licences as defined by this act, or as near thereto as circumstances admit; and any person convicted of an offence against the tenor of a billiard licence, or of any offence declared by the last-mentioned act to be an offence against the tenor of a licence as defined by this act, shall be punished under this act in the same manner in all respects as a licensed person within the meaning of this act is punishable under this act for suffering any gaming or any unlawful game to be carried on on his premises; and in construing the last-mentioned act any reference to the Intoxicating Liquor Licensing Act, 1828, shall be construed to refer to that act as amended by this act.

Billiards.

On reference to the schedule of 8 & 9 Vict. c. 109, it will be seen that offences against the tenor of a billiard licence are the following: not keeping the words "licensed for billiards" on the outside of the house; wilfully or knowingly permitting drunkenness (as to which see sect. 13 of this act, p. 89); knowingly allowing the consumption of exciseable liquor (as to which see *Jones* v. *Whitaker* (L. R., 5 Q. B. 541; 39 L. J., M. C. 139), where it was decided that beer is not an "exciseable liquor"); knowingly suffering unlawful games (as to which see sect. 17 of this act, *supra*, p. 93); knowingly suffering persons of notoriously bad character to assemble in the house; and opening the house for play or allowing any play therein after one and before eight of the clock in the morning, or keeping it open or allowing any play therein on Sundays, Christmas Day or Good Friday, or on any day appointed for a public fast or thanksgiving. There is no appeal against a refusal to grant a billiard licence. (*R.* v. *Devonshire*, 8 E. & B. 644.) All these offences are made by this section punishable like the offence of gaming or suffering unlawful games under sect. 17. The words "or of any offence declared by the last-mentioned act to be an offence against the tenor of a licence as defined by this act," appear to be intended to authorize the conviction of the holder of a billiard licence for the offences under this act corresponding to the offences

against the tenor of a billiard licence. As, however, their meaning is very obscure, and they are drawn in the alternative, it would seem safer to convict of the offences as described in the billiard licence, and to frame the conviction accordingly.

37 & 38 Vict. c. 49.

No appeal against refusal to grant new licence under Act of 1869.

[Act of 1874, s. 27. There shall be repealed so much of section eight of the Wine and Beerhouse Act, 1869, as incorporates or applies any repealed enactment, and no appeal shall be had to quarter sessions from any act of any justice with respect to the grant of new certificates under the Wine and Beerhouse Acts, 1869 and 1870.

For s. 8 of the Act of 1869, see p. 71. The present section gets rid of the effect of the decision in *Reg.* v. *Smith* (L. R., 8 Q. B. 146; 42 L. T., M. C. 46; 28 L. T., N. S. 129) that the appeal given by that section was not taken away by the repeal of s. 27 of the Act of 1828 (p. 48).

Definitions and Repeal.

Interpretation clause of Act of 1874.

Sect. 32. In this act, if not inconsistent with the context, the following expressions have the meanings hereinafter expressly assigned to them; that is to say,

Metropolitan district.

"The metropolitan district" means the area in that behalf mentioned in the schedule* hereto.

"Town."

"Town" means an urban sanitary district as described for the purposes of the Public Health Act, 1872; and any collection of houses adjacent to a town as so defined shall, for the purpose of the provisions of this act with respect to the closing of premises, be deemed to be part of such town after it has been declared so to be by an order of the county licensing committee having jurisdiction in the place where such houses are situated: Provided that no urban sanitary district, whether including such adjacent houses or not, shall be deemed a town, unless it contains one thousand inhabitants.

"Populous place."

"Populous place" means any area with a population of not less than one thousand, which by reason of the density of such population the county licensing committee may by order determine to be a populous place.

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* Schedule to the Act of 1874.

Metropolitan District.

The City of London or the liberties thereof, or any parish or place for the time being subject to the jurisdiction of the Metropolitan Board of Works, or within the area contained within a circle the radius of which is four miles from Charing Cross.

At a meeting specially convened for that purpose in manner provided by any regulations in that behalf, or in default of such regulations by the clerk of the peace, as soon as may be after the passing of this act, and not later than the first day of September one thousand eight hundred and seventy-four, the county licensing committee shall consider all the cases within their jurisdiction with respect to which it is incumbent upon them to make orders in pursuance of this section, and they shall make orders accordingly, and shall specify therein the boundaries of such towns or populous places. Meetings of justices.

The county licensing committee may adjourn any meeting held in pursuance of this section, and may also at any subsequent meeting especially convened for that purpose, make with respect to any town or populous place within their jurisdiction any like order not restrictive of any order previously made.

Provided that as soon as may be after the publication of each census the county licensing committee shall, at a meeting to be specially convened for the purpose, revise the orders then in force within their jurisdiction, constituting areas either parts of towns or populous places, and may alter or cancel any of the said orders or may make such further orders, if any, as they shall deem necessary to give effect to the provisions of this act. Revision of order as to "town" and "populous place."

"Occasional licence" means a licence to sell beer, spirits, or wine granted in pursuance of the thirteenth section of the act passed in the twenty-fifth and twenty-sixth years of the reign of her present Majesty, chapter twenty-two, and section five of the act of the twenty-seventh year of the reign of her present Majesty, chapter eighteen, and the acts amending the same in relation to the licences therein mentioned, or of any of such acts. "Occasional licence."

"A new licence" means a licence for the sale of any intoxicating liquor granted at a general annual licensing meeting in respect of premises in respect of which a similar licence has not theretofore been granted. "New licence."

As to "metropolitan district," "town," and "populous place," see note to sect. 3, p. 98. The intention of the provisions relating to the meeting of the licensing committee under this section is, that they shall meet on some day not later than 1st September, 1874. If the consideration of any cases be omitted at that meeting, they may afterwards meet again, either by adjournment or at a specially convened meeting, to consider them, but that an order having the effect of extending hours once made cannot be revised except at the meeting after the new census.

Repeal by Act of 1874.

Sect. 33. There are hereby repealed the sections of the principal act relating to the following matters; that is to say,

(1.) Sections nineteen to twenty-two, both inclusive, relating to adulteration, and the first schedule to the principal act;

(2.) Section twenty-four, relating to hours of closing; and

(3.) Section thirty-five, relating to entry on premises by constables; and

(4.) So much of sections five, six, thirteen, fourteen, sixteen, seventeen, and twenty-eight as relates to the records of convictions on licences, and of section seventy-four as contains the definition of a town for the purposes of the provisions with respect to closing and of a new licence.

"Town."

(5.) The last paragraph of section fifty-six, beginning with the words "In a county the justices" to the end of the section.

Provided that the repeal enacted in this act shall not affect—

(1.) Anything duly done or suffered under any enactment hereby repealed:

(2.) Any right or privilege acquired or any liability incurred under any enactment hereby repealed:

(3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence against any enactment hereby repealed.]

Application of certain of the preceding Provisions of this Act to Ireland.

Act of 1872—*contd.*

Mode of reference of Act of 1872 to Ireland.

76. A reference to the words forming a heading to any of the provisions of this act shall be deemed to be a reference to all the provisions under such heading, unless otherwise specially provided.

In 1874 a distinct licensing act (37 & 38 Vict. c. 69) was passed for Ireland, the provisions of which as to early-closing licences (see p. 135), occasional licences (see p. 111), mitigation of penalties (see p. 148), recording of convictions upon the licence (see p. 113), entry on premises (see p. 117), *bonâ fide* travellers (see p. 102), entertainment of private friends by licensed persons (see p. 106), are, *mutatis mutandis*, identical with those of the English act. The repealing section is also identical, with some necessary additions.

List of provisions extending to Ireland.

77. The preceding provisions of this act with respect to—

1. Illicit sales ;*
2. Offences against public order ;†
3. *Adulteration* (*Repealed*) ;‡
4. Repeated convictions ; §
5. *Entry on Premises* (*Repealed*) ; ‖
6. Six day licences ;¶
7. Legal proceedings ;**
8. Miscellaneous ;†† and
9. Saving clauses,‡‡

shall extend to Ireland, with the modifications following :— Modifications.

Interpretation clause.

"Intoxicating liquor" shall mean spirits, wine, beer, porter, cider, perry, and sweets, and any fermented, distilled, or spirituous liquor which cannot, according to any law for the time being in force, be legally sold without a licence from the commissioners of inland revenue :

"Licence."

"Licence" shall mean a certificate of justices under the provisions of the act passed in the session of parliament held in the third and fourth years of the reign of his late Majesty King William the Fourth, chapter sixty-eight, or of the act passed in the session of parliament held in the seventeenth and eighteenth years of the reign of her present Majesty, chapter eighty-nine, and any act amending the same, and shall include a certificate under the Beerhouses (Ireland) Act, 1864, as amended by the Beerhouses (Ireland) Act (1864) Amendment Act, 1871, and any act amending the same :

"Intoxicating Liquor Licensing Acts."

"Intoxicating Liquor Licensing Acts" shall include the acts authorizing the grant of a licence as defined by this section, and of an excise licence as hereinafter in this act defined, and any act or acts amending the same :

"Licensing justices" shall mean the justices or authority having jurisdiction in respect of the grant of a licence as defined by this section :

"Licensed person" shall mean a person holding a licence as defined in this section, which licence is in force :

"Premises."

"Premises" shall include house or place as defined

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* See sects. 3—11.
† See sects. 12—18.
‡ See now Act of 1874, s. 14.
§ See Act of 1872, ss. 30 - 34.
‖ See now Act of 1874, ss. 16, 17.
¶ See Act of 1872, s. 49.
** See sects. 51—59.
†† See sects. 60—71.
‡‡ See sects. 72, 73.

by section twelve of the act passed in the session of parliament held in the seventeenth and eighteenth years of the reign of her present Majesty, chapter eighty-nine:

"Licensed premises." "Licensed premises" shall mean premises in respect of which a licence as defined by this section has been granted and is in force:

"Unlicensed premises" shall mean premises in respect of which a licence as defined by this section has not been granted or is not in force:

"Sale by retail." "Sale by retail" in respect of any intoxicating liquor means the sale of that liquor in such quantity as is declared to be sale by retail by any acts relating to the sale of intoxicating liquors:

"Owner of licensed premises" shall mean the person for the time being entitled to receive on his own account, either as mortgagee or other incumbrancer, in possession of the rackrent of such premises:

"Order in Council" or "Order of her Majesty in Council," shall mean any order made by the Lord Lieutenant of Ireland, or the lords justices or other chief governor or governors of Ireland for the time being, by and with the advice of her Majesty's privy council in Ireland:

The powers which may be exercised by her Majesty may be exercised as to Ireland by the Lord Lieutenant or the lords justices, or other chief governor or governors of Ireland for the time being:

The term "Dublin Gazette" shall be substituted for the term "London Gazette:"

The term "county" shall extend to and include county of a city, county of a town, county of a town and city, city and county:

"Register of licences." The term "register of licences," except in the police district of Dublin metropolis, shall mean the list or register directed to be kept by section eleven of the act passed in the session of parliament held in the third and fourth years of the reign of his late Majesty King William the Fourth, chapter sixty-eight; and in the police district of Dublin metropolis a list or register to be formed by such person as may be directed by the chief magistrate of the said district, in like manner in every respect, and containing the like particulars in relation to the said district and the persons licensed therein, as the list or register directed to be kept elsewhere by the said section of the said act; and all the

provisions of the said section shall, so far as the same are applicable, apply to such list or register within the said district, and the same shall be kept at the head police office of such district:

"Clerk to the licensing justices."

The term "clerk to the licensing justices" in relation to the police district of Dublin metropolis shall mean the person who keeps the register of licences in such district, and elsewhere in any county or borough shall mean the clerk of the peace for such county or borough:

"Police authority."

The term "police authority" shall mean,—

In the police district of Dublin metropolis either of the commissioners of police for the said district, and

Elsewhere in Ireland, in any other police district, the sub-inspector of the Royal Irish Constabulary:

"Superintendent of police."

The term "superintendent of police" shall mean,—

In the police district of Dublin metropolis any superintendent, inspector, acting inspector, or sergeant of Dublin metropolitan police, and

Elsewhere in Ireland, in any other police district, any sub-inspector or head constable of the Royal Irish Constabulary:

"Constable."

The term "constable"—

In the police district of Dublin metropolis shall mean constable of the Dublin metropolitan police, and

Elsewhere in Ireland, any constable or sub-constable in the Royal Irish Constabulary:

The term "special session" shall mean "petty sessions:"

"Summary Jurisdiction Act, 1848."

The term "Summary Jurisdiction Act, 1848," shall mean, as regards the police district of Dublin metropolis, the acts regulating the powers and duties of justices of the peace for such district, and elsewhere in Ireland the act passed in the session holden in the fourteenth and fifteenth years of the reign of her Majesty Queen Victoria, chapter ninety-three, intituled "An Act to consolidate and amend the acts regulating the proceedings of petty sessions, and the duties of justices of the peace out of quarter sessions, in Ireland," and any acts amending the same:

The term "court of summary jurisdiction" shall mean any justice or justices of the peace or other magistrate to whom jurisdiction is given by the Summary Jurisdiction Act, 1848; and when hear-

ing and determining any information or complaint under this act, the said court shall be constituted in manner prescribed by the said first-mentioned act :

The expression "court of quarter sessions for the county or place in which the cause of appeal has arisen" shall mean the court of quarter sessions of the division of the county or the court of the recorder of the borough (if there be a recorder in such borough) in which the cause of appeal has arisen, and if the cause of appeal has arisen within the police district of Dublin metropolis the court of the recorder of the city of Dublin :

The term "one of her Majesty's Superior Courts at Dublin" shall be substituted for the term "one of her Majesty's Superior Courts at Westminster."

Excise licences.

Provided always, that a licence, as defined by this section, shall not be required for the sale of intoxicating liquor by retail in pursuance of a retail licence granted by the commissioners of inland revenue, in any case which,* previous to the passing of this act, such first-mentioned licence was not required.

"House or place."

It will have been seen that "premises" means "house or place," as defined by 17 & 18 Vict. c. 89, s. 12. By that act "house or place" means every room, closet, cellar, yard, stable, outhouse, shed or any other place whatsoever of, belonging, or in any manner appertaining to such house or place.

Closing hours. Amendment of 23 & 24 Vict. c. 107, s. 43.

78. Notwithstanding the provisions of section forty-three of the act passed in the session of parliament held in the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter one hundred and seven, it shall not be lawful for any person to sell or expose for sale, or to open or to keep open any premises for the sale of, intoxicating liquors on Sunday, Christmas Day, Good Friday, or any day appointed for a public fast or thanksgiving after nine o'clock at night within any city or town the population of which according to the last parliamentary census shall exceed five thousand, nor elsewhere after seven o'clock at night on such days, and on other days after ten o'clock at night.

The provisions of all acts relating to the sale of intoxicating liquors by retail, authorizing or forbidding the doing of any act, matter, or thing at any times

* *Sic.*

during which the sale of intoxicating liquors is by the said acts prohibited, shall be construed as if the times during which the sale of intoxicating liquors is prohibited by this section were substituted respectively in the said acts for the times therein mentioned.

Penalty for selling in closing hours as altered by the act.

Any person who sells or exposes for sale, or opens or keeps open any premises for the sale of, intoxicating liquors at any other times than those limited for such purpose by section forty-three of the act passed in the session of parliament held in the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter one hundred and seven, as the same is amended by this section, or during such times as aforesaid allows any intoxicating liquors to be consumed on such premises, shall for the first offence be liable to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds.

Saving for travellers and lodgers.

None of the provisions contained in this section shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor to bonâ fide travellers or to persons lodging in his house.

Nothing in this section contained shall preclude the sale at any time at a railway station of intoxicating liquors to persons arriving at or departing from such station by railroad.

The closing hours fixed by 23 & 24 Vict. c. 107, s. 43, are as follow: on Sundays, &c., till 2 P.M. and after 11 P.M., and on other days, till 7 A.M. and after 11 P.M., "being the time limited" by 3 & 4 Will. 4, c. 68, s. 14, which latter section imposes a penalty of 2*l.* for each offence, and provides that each separate sale "shall be deemed a separate offence." As to recording the conviction on the licence, see note to sect. 76, p. 160. As to travellers, see note to sect. 10 of the Act of 1874, p. 103.

Penalties of the act to be in substitution of old penalties.

79. All penalties and forfeitures in respect of offences under the preceding provisions of this act, as applied to Ireland, shall be in substitution for and not in addition to penalties and forfeitures (other than penalties recoverable by or on behalf of the commissioners of inland revenue, or any laws relating to the excise) incurred in respect of like offences under any other act or acts, and all penalties recovered under the said provisions of this act shall be applied in manner directed by "The Fines Act (Ireland), 1851," and any act amending the same.

14 & 15 Vict. c. 90.

Repeal of 34 & 35 Vict. c. 88, s. 4.

80. Section four of "The Intoxicating Liquors (Licences Suspension) Act, 1871," shall be and the same is hereby repealed.

Sect. 4 of the Suspension Act applied it to Ireland. The whole act is repealed in the schedule, so that sect. 4 is repealed twice over.

Meaning of "spirit grocer."

81. The following provisions shall apply to Ireland only:

The term "spirit grocer" in the following provisions of this act means any person dealing in or selling tea, cocoa-nuts, chocolate, or pepper, and having an excise licence to sell spirits by retail in any quantity not exceeding two quarts at any one time to be consumed elsewhere than on the premises where sold, under the provisions of the act passed in the session of parliament held in the eighth and ninth years of the reign of her present Majesty, chapter sixty-four, which licence is in the following provisions referred to as an "excise licence," and, save as aforesaid, terms used in the following provisions of this act shall have the same meanings respectively as they have in the preceding provisions of this act as applied to Ireland.

"Excise licence."

The spirit grocers' licence was first introduced by the Irish Parliament in 1791, and has since been recognized in the Excise Acts of Great Britain. (See Bateman on Excise, p. 184, citing *Reg. ex rel. Boland* v. *Commissioners of Excise*, 2 Jebb & Symes (Irish Rep.) 243.)

Certain spirit grocers' excise licences not to be granted without certificate of justices to character.

82. It shall not be lawful for any officer of excise in Ireland to grant a new excise licence to any person who at any time during the then next preceding two years has been a spirit grocer, or who during such period as aforesaid has held a certificate under the Beerhouses (Ireland) Act, 1864, or the Beerhouses (Ireland) Act (1864) Amendment Act, 1871, or to grant to any spirit grocer upon the expiration of his excise licence a renewal of such excise licence, unless such person or spirit grocer produces a certificate signed by two or more justices of the peace presiding at the petty sessions of the district in which such person or spirit grocer resides, or if in the Dublin metropolitan police district by a divisional justice of the district in which such person or spirit grocer resides, to the good character of such person, and to the peaceable and orderly manner in which his business was conducted during the year next preceding the expiration of his former excise licence or certificate, or, in case of a renewal, during the past year.

All applications for such certificates shall be made

in the manner and subject to the like conditions as to appeals against the same and otherwise (so far as the same are applicable) as are prescribed by the Beer-houses (Ireland) Act, 1864, in relation to applications for certificates under the said act. 27 & 28 Vict. c. 35.

By sect. 9 of the Licensing Act (Ireland), 1874, the provisions of this section are extended to the transfer of excise licences.

Penalty on spirit grocer if liquor be drunk on adjoining highway with his consent.

83. If any purchaser of any intoxicating liquor from a spirit grocer drinks such liquor on the premises where the same is sold, or on any highway adjoining or near such premises, such spirit grocer shall, if it shall appear that such drinking was with his privity or consent, be subject to the following penalties; (that is to say,)

For the first offence he shall be liable to a penalty not exceeding ten pounds:

For the second and any subsequent offence he shall be liable to a penalty not exceeding twenty pounds:

For the purposes of this section the expression "premises where the same is sold" shall include any premises adjoining or near the premises where the liquor is sold, if belonging to such spirit grocer, or under his control, or used by his permission.

This section, *mutatis mutandis*, is identical with sect. 5 (for which see p. 84). As to recording the conviction upon the licence, see note to sect. 76 (p. 160).

Penalty on spirit grocer carrying liquor from his shop to be drunk elsewhere in evasion of his licence.

84. If any spirit grocer himself takes or carries, or employs or suffers any other person to take or carry, any intoxicating liquor out of or from the premises of such spirit grocer for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any other house, or in any tent, shed, or other building of any kind whatever, belonging to such spirit grocer, or hired, used, or occupied by him, or on or in any place, whether enclosed or not, and whether or not a public thoroughfare, such intoxicating liquor shall be deemed to have been consumed by the purchasers thereof on the premises of such spirit grocer, with his privity and consent; and such spirit grocer shall be punished accordingly in manner provided by the next preceding section.

Any conviction for an offence under this section shall be recorded on the excise licence of the spirit grocer convicted.

In any proceeding under this section it shall not be necessary to prove that the premises or place or places

to which such liquor is taken to be drunk belonged to, or were hired, used, or occupied by, such spirit grocer, if proof be given to the satisfaction of the court hearing the case that such liquor was taken to be consumed thereon or therein with intent to evade the conditions of his excise licence.

This section, *mutatis mutandis*, is identical with sect. 6 (see p. 85).

No communication to be made between spirit grocer's shop and house of public resort. Penalty 10*l.* a-day.

85. Every person who makes or uses, or allows to be made or used, any internal communication between the premises of any spirit grocer and any other premises which are used for public entertainment or resort, or as a refreshment-house, shall be liable to a penalty not exceeding ten pounds for every day during which such communication remains open.

In addition to any penalty imposed by this section, any person convicted of an offence under this section shall, if he be the holder of an excise licence, forfeit such licence.

This section, *mutatis mutandis*, is identical with sect. 9 (see p. 86).

Closing hours for "spirit grocers."

86. No spirit grocer shall have or keep his premises open, nor shall he sell any intoxicating liquor in any such premises at any other times than those limited for the sale of intoxicating liquors by retail to be drunk or consumed on the premises by section forty-three of the act passed in the session of parliament held in the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter one hundred and seven, as the same is amended by this act, and any spirit grocer, acting in contravention of the provisions of this section, shall be liable to all and the same penalties and consequences to which under the preceding provisions of this act any person who sells or exposes for sale, or opens or keeps open any premises for the sale of intoxicating liquors at any other time than those limited by the said section forty-three of the said act, as the same is amended by this act, is liable.

For the time "limited by sect. 43 of 23 & 24 Vict. c. 107, as amended by this act," see sect. 78 of this act and note, p. 164.

Power to justices and constables to put out tipplers from spirit grocer's shop in closing hours.

87. It shall be lawful for any justice of the peace, or any superintendent of police, or any constable duly authorized for such purpose by any such justice or superintendent within the limits of his jurisdiction, to enter into any premises kept by a spirit grocer for selling intoxicating liquors, at any time or hour during which the sale of such liquors by such spirit grocer is

prohibited by this act, and to remove from and put out of such premises any person who shall be so found within such prohibited hours in such house or place (not being a lodger in or an inmate of such premises), and who shall appear to be or to have recently been drinking, tippling, or gaming therein; and if any such person shall not, when thereto required by such justice of the peace, superintendent of police, or constable, remove from and quit such premises, or shall forcibly resist such justice, superintendent, or constable, or shall be found drunk therein, it shall and may be lawful for any superintendent of police or for any constable to apprehend and take into custody any such person so offending, and to carry and convey, or cause to be carried and conveyed, every and any such person so apprehended before any justice of the peace within whose jurisdiction such premises shall be situate, to be dealt with according to law; and every such person who shall so neglect or refuse to remove from or quit such premises, or shall so forcibly resist such justice, superintendent, or constable, being duly convicted of such offence, shall thereupon for every such offence forfeit any sum not exceeding twenty shillings nor less than five shillings; and if any offender so convicted shall not forthwith pay the sum so forfeited, such offender shall be imprisoned for any time not exceeding one week.

Penalty for refusing to quit licensed premises.

88. The preceding provisions of this act relating to repeated convictions, except so much thereof as relate to the disqualification of premises, shall apply to spirit grocers, and for the purpose of such application the terms "spirit grocer" and "excise licence" shall respectively be therein substituted for the terms licensed person and licence.

Provisions as to repeated convictions to apply to spirit grocers, &c.

For effect of "repeated convictions," see sect. 30, p. 114.

89. The preceding provisions of this act relating to legal proceedings as the same are applied to Ireland, and to the application of penalties in Ireland, shall apply to all legal proceedings in respect of any of the special provisions of this act relating to Ireland, and to the application of all penalties recovered in pursuance thereof.

Legal proceedings—Penalties.

For the provisions of the act relating to legal proceedings, see sect. 51, p. 137. By sect. 31 of the Licensing Act (Ireland), 1874, subs. 4 of that section is repealed, and it is enacted that "when the appellant is in custody, and shall enter into such recognizances with sureties approved by the justice in manner by the

principal act provided, or shall give such other security as by the said act provided, the justice shall release him from custody."

No licence to be granted to disqualified persons or for disqualified premises.

90. In Ireland no licence or excise licence, as respectively defined in the preceding provisions of this act in relation to Ireland, shall be granted under the Intoxicating Liquor Licensing Acts to any person or in respect of any premises declared by or in pursuance of any of the Intoxicating Liquor Licensing Acts or this act to be disqualified persons or disqualified premises during the continuance of such disqualification. Any licence or excise licence held by any person so disqualified or attached to premises so disqualified shall be void.

SCHEDULES to which this Act refers.

SCHEDULE OF DELETERIOUS INGREDIENTS.

Repealed, Licensing Act, 1874.

SECOND SCHEDULE.

Session and Chapter.	Title.	Extent of Repeal.
21 James 1, c. 7.	An Act for the better repressing of drunkenness, and restraining the inordinate haunting of inns, ale-houses, and other victualling houses.	So much as is unrepealed.
9 Geo. 4, c. 61 . .	An Act to regulate the granting of licences to keepers of inns, ale-houses, and victualling houses in England.	Section six; section ten; section eleven; so much of section thirteen as relates to the form of licence; sections eighteen and nineteen; section twenty; section twenty-one; section twenty-two; section twenty-three; section twenty-five; section twenty-six; also section twenty- seven; section twenty-eight; section twenty-nine, except in so far as the three last-mentioned sections relate to the renewal of licences or to the transfer of licences under sections four and fourteen of the same act; also section thirty-one; section thirty-two; section thirty-three; section thirty-four.

Session and Chapter.	Title.	Extent of Repeal.
11 Geo. 4 & 1 Will. 4, c. 64.	An Act to permit the general sale of beer and cider by retail in England.	Section six ; section eleven ; section twelve ; section thirteen ; section fifteen ; section sixteen ; section seventeen ; section eighteen ; section nineteen ; section twenty ; section twenty-one; section twenty-two; section twenty-five; section twenty-six; section twenty-seven ; so much of section thirty as incorporates or applies any repealed enactment.
4 & 5 Will. 4, c. 85.	An Act to amend an Act passed in the first year of his present Majesty to permit the general sale of beer and cider by retail in England.	Section four ; section seven ; section ten ; so much of section eleven as incorporates or applies any repealed enactment ; section eighteen ; section twenty-two.
2 & 3 Vict. c. 47.	An Act for further improving the police in and near the metropolis.	Section forty-one, from "and in the case of any offence" to end of section. Section forty-two ; section forty-three.
3 & 4 Vict. c. 61.	An Act to amend the Acts relating to the general sale of beer and cider by retail in England.	Section ten ; section thirteen ; section fifteen ; section sixteen ; section seventeen ; section nineteen ; also so much of section twenty-one as incorporates or applies any repealed enactment.
11 & 12 Vict. c. 49.	An Act for regulating the sale of beer and other liquors on the Lord's Day.	The whole Act so far as it relates to England.
18 & 19 Vict. c. 118.	An Act to repeal the Act of the seventeenth and eighteenth years of the reign of her present Majesty for further regulating the sale of beer and other liquors on the Lord's Day, and to substitute other provisions in lieu thereof.	The whole Act.

Session and Chapter.	Title.	Extent of Repeal.
23 & 24 Vict. c. 27.	An Act for granting to her Majesty certain duties on wine licences and refreshment houses, and for regulating the licensing of refreshment houses and the granting of wine licences.	Section five; section seventeen; section twenty; section twenty-six; section twenty-seven; section twenty-eight; section twenty-nine; section thirty-one; also sections eighteen, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, forty-one, and forty-two, so far as such sections relate to the sale of intoxicating liquors or any offences connected therewith; also section thirty-nine; section forty.
23 & 24 Vict. c. 113.	An Act to grant duties of excise on chicory and on licences to dealers in sweets or made wines, also to reduce the excise duty on hops and the period of credit allowed for payment of the duty on malt and hops respectively; to repeal the exemption from licence duty of persons dealing in foreign wine and spirits in bond, and to amend the laws relating to the excise.	Section forty-one.
27 & 28 Vict. c. 64.	An Act for further regulating the closing of public houses and refreshment houses within the metropolitan police district, the city of London, certain corporate boroughs, and other places.	The whole Act, except in so far as it relates to refreshment houses in which intoxicating liquors are not sold.
28 & 29 Vict. c. 77.	An Act to amend the Act 27 & 28 Vict. c. 64, commonly called "The Public House Closing Act, 1864."	The whole Act, except in so far as it relates to refreshment houses in which intoxicating liquors are not sold.

Session and Chapter.	Title.	Extent of Repeal.
32 & 33 Vict. c. 27.	An Act to amend the law for licensing beer-houses, and to make certain alterations with respect to the sale by retail of beer, cider and wine.	So much of section six as relates to the form of certificate; section twelve; section thirteen; section fourteen; section fifteen; section sixteen; section seventeen; section eighteen; so much of section nineteen as relates to offences; section twenty-two.
33 & 34 Vict. c. 29.	An Act to amend and continue "The Wine and Beerhouse Act Amendment Act, 1869."	Section five; section six; section seven from "the second and third provisoes" to the end of section; section eight; section nine; section twelve; section thirteen; section fifteen; section seventeen.
34 & 35 Vict. c. 88.	An Act to restrict during a limited time the grant by justices of the peace of new licences and certificates for the sale of intoxicating liquors by retail, and for other purposes.	The whole Act.

APPENDIX OF FORMS.

OFFICIAL FORMS.*

I.—Grant of a New Licence, and Confirmation of such Grant.

Licensing Act, 1872.

At the general annual licensing meeting [*or* an adjournment of the general annual licensing meeting], holden at on the day of 187 , for the division of in the county of [*or* for the borough of]:

(*a.*) We, being of the justices acting for the said division, and being the majority of those at the said meeting assembled, *or*,

(*b.*) We, being the majority of the members present of the borough licensing committee, appointed for the said borough in pursuance of the Licensing Act, 1872, *or*,

(*c.*) We, being of the justices of the said borough, and being the majority of those at the said meeting assembled,

Hereby grant unto *A. B.*, of [*here insert* a licensed victualler, beerhouse keeper, coffee house keeper, confectioner, eating house keeper, licensed dealer in spirits, a refreshment house keeper, a wholesale spirit dealer, the holder of a strong beer licence, *or as the case may be*], this licence authorising him to apply for and hold

[*Here insert A., or B., or C. . . . or M., as in the Appendix, as the case may be.*]

The owner of the premises in respect of which this licence is granted is *M. N.*, of

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* Note by Editors.—These Forms were issued by the Home Office in July, 1873, under sect. 48, subs. 1 of the Act of 1872. It is understood that no further revision is to take place in consequence of the passing of the Act of 1874. The early closing licence and the provisional licence created by that act may be provided for by conditions analogous to that prescribed for the six-day licence. (See p. 180.) By sect. 23 of the Act of 1874, separate licences of justices are not required in the case of separate excise licences, so that forms B. and C., &c., should, if necessary, be inserted one after the other in the skeleton Form. For the "Appendix," see p. 179.

This licence shall be in force from the day of until the day of .

Witness our hands.

[*Signatures of Justices.*]*

Confirmation.

At a meeting holden at on the day of ,

(*a.*) We, being the majority of members present of the county licensing committee, appointed for the said county in pursuance of the Licensing Act, 1872, do hereby confirm the grant of the above licence.

Witness our hands*

or,

(*b.*) We, being of the justices of the said borough, and being the majority of those at the said meeting assembled, do hereby confirm the grant of the above licence.

Witness our hands*

or,

(*c.*) We, being the majority of the members present of the joint committee, appointed for the said borough in pursuance of the Licensing Act, 1872, do hereby confirm the grant of the above licence.

Witness our hands

[*Signatures of Justices.*]*

II.—Renewal of a Licence, 35 & 36 Vict. c. 94, s. 74.

Licensing Act, 1872.

At the general annual licensing meeting [*or* an adjournment of the general annual licensing meeting] holden at on the day of , for the division of in the county of [*or*, for the borough of]:

(*a.*) We, being of the justices acting for the said division, and being the majority of those at the said meeting assembled,

or,

(*b.*) We, being of the justices of the said borough, and being the majority of those at the said meeting assembled,

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* NOTE.—A licence may be authenticated by an official seal in lieu of signatures, 35 & 36 Vict. c. 94, s. 40, subs. 3, applying 33 & 34 Vict. c. 29, s. 4, subs. 2. *In that case insert, instead of* "witness our hands"—"Given under the official seal of the said justices in sessions assembled, which seal is hereto affixed in their presence by me, *C.D., Clerk of the Licensing Justices," or as the case may be.*

Hereby grant unto *A. B.* of [*here insert* a licensed victualler, beerhouse keeper, coffee house keeper, confectioner, eating house keeper, licensed dealer in spirits, a refreshment house keeper, a wholesale spirit dealer, the holder of a strong beer licence, *or as the case may be*], this renewal licence, authorising him to apply for and hold

[*Here insert A., or B., or C. . . . or M., as in the Appendix, as the case may be.*]

The owner of the premises in respect of which this licence is granted is *M. N.* of .

This licence shall be in force from the day of , until the day of .

Witness our hands.

[*Signatures of Justices.*]*

III.—The same by way of Endorsement, 35 & 36 Vict. c. 94, s. 48 (2).

(*To be endorsed on the Licence, or on a copy thereof.*)

At the general annual licensing meeting [*or* an adjournment of the general annual licensing meeting] holden at on the day of , for the division of in the county of [*or* for the borough of]:

(*a.*) We, being of the justices acting for the said division, and being the majority of those at the said meeting assembled,

or,

(*b.*) We, being of the justices of the said borough, and being the majority of those at the said meeting assembled,

Hereby renew the licence within contained, and such licence as renewed shall be in force until the day of .

The owner of the premises in respect to which the licence is granted is *M. N.* of .

Witness our hands.

[*Signatures of Justices.*]*

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* NOTE.—A licence may be authenticated by an official seal in lieu of signatures, 35 & 36 Vict. c. 94, s. 40, subs. 3, applying 33 & 34 Vict. c. 29, s. 4, subs. 2. *In that case insert, instead of* "witness our hands"—"Given under the official seal of the said justices in sessions assembled, which seal is hereto affixed in their presence by me, *C. D., Clerk of the Licensing Justices,*" *or as the case may be.*

IV.—Transfer of Licence granted at Special Sessions, in pursuance of 9 Geo. 4, c. 61, s. 4.

At a special sessions holden at on the day of for the division of in the county of [*or*, for the borough of]:

(*a*.) We, being of her Majesty's justices of the peace acting in and for the said division, and being the majority of those at the said sessions assembled,

or,

(*b*.) We, being of the justices of the said borough, and being the majority of those at the said meeting assembled,

Hereby, pursuant to section 4 of the Intoxicating Liquor Licensing Act, 1828, and the acts amending the same, licence one *C. D.* of and transfer to him* the licence now held by *A. B.* of [*here insert* a licensed victualler, beerhouse keeper, coffee house keeper, confectioner, eating house keeper, licensed dealer in spirits, a refreshment house keeper, a wholesale spirit dealer, the holder of a strong beer licence, *or as the case may be*], and granted on the day of last, authorizing him to hold

[*Here insert A., or B., or C. . . . or M., as in the Appendix, as the case may be.*]

* [*If by indorsement, say from the asterisk** the licence within contained now held by the within-named *A. B.*]

And we hereby authorize the said *C. D.* to apply for and hold [*in the case of alehouses insert*, any of the said excise licences, as now held, as well as those which were not held by the said *A. B.*:—*in other cases insert*, the said excise licence so held by the said *A. B.*]

This transfer to be in force from this day until the .

Witness our hands .

[*Signatures of Justices.*]†

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† NOTE.—A licence may be authenticated by an official seal in lieu of signatures, 35 & 36 Vict. c. 94, s. 40, subs. 3, applying 33 & 34 Vict. c. 29, s. 4, subs. 2. *In that case insert, instead of* "witness our hands"—"Given under the official seal of the said justices in sessions assembled, which seal is hereto affixed in their presence by me, *C. D., Clerk of the Licensing Justices," or as the case may be.*

V.—Grant of Licence at Special Sessions, in pursuance of 9 Geo. 4, c. 61, s. 14.

At a special sessions holden at on the day of , for the division of in the county of [*or* for the borough of]:

(*a.*) We, being of the justices acting for the said division, and being the majority of those at the said sessions assembled,

or,

(*b.*) We, being of the justices of the said borough, and being the majority of those at the said sessions assembled,

Hereby, pursuant to section 14 of the Intoxicating Liquor Licensing Act, 1828, and the acts amending the same, grant unto *A. B.* of [*here insert* a licensed victualler, beerhouse keeper, coffee house keeper, confectioner, eating house keeper, licensed dealer in spirits, a refreshment house keeper, a wholesale spirit dealer, the holder of a strong beer licence, *or as the case may be*], this licence authorizing him to apply for and hold

[*Here insert A., or B., or C. . . . or M., as in the Appendix, as the case may be.*]

The owner of the premises in respect of which this licence is granted is *M. N.* of .

This licence shall be in force from the day of until the day of .

Witness our hands.

[*Signatures of Justices.*]*

APPENDIX *containing descriptions of the several Licences (for insertion in the previous skeleton Forms).*

A.

Any of the excise licences that may be held by a publican for the sale by retail, at a house situated at , known by the sign of the , of intoxicating liquor, to be consumed either on or off the premises. Alehouse licence (on or off).

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* NOTE.—A licence may be authenticated by an official seal in lieu of signatures, 35 & 36 Vict. c. 94, s. 40, subs. 3, applying 33 & 34 Vict. c. 29, s. 4, subs. 2. *In that case insert instead of* "witness our hands"—"Given under the official seal of the said justices in sessions assembled, which seal is hereto affixed in their presence by me, *C. D., Clerk of the Licensing Justices,*" *or as the case may be.*

If the licence be a six-day licence add as a separate paragraph:

The premises in respect of which this licence is granted shall be closed during the whole of Sunday.*

B.

Beerhouse licence (off).

An excise licence to sell by retail at a house situated at beer to be consumed off the premises, in pursuance of the Act 11 Geo. 4 & 1 Will. 4, c. 64, and acts amending the same.

C.

Beerhouse licence (on or off).

An excise licence to sell by retail at a house situated at beer to be consumed either on or off the premises, in pursuance of the Act 11 Geo. 4 & 1 Will. 4, c. 64, and acts amending the same.

If the licence be a six-day licence add as a separate paragraph:

The premises in respect of which this licence is granted shall be closed during the whole of Sunday.

D.

Cider and perry licence (on or off).

An excise licence to sell by retail at a house situated at cider and perry, to be consumed either on or off the premises, in pursuance of the Act 11 Geo. 4 & 1 Will. 4, c. 64, and acts amending the same.

If the licence is a six-day licence add as a separate paragraph:

The premises in respect of which this licence is granted shall be closed during the whole of Sunday.

E.

Additional licence to strong beer dealers.

An additional excise licence to sell by retail at a house situated at beer, to be consumed off the premises, in pursuance of the Act 26 & 27 Vict. c. 33, s. 1.

F.

Table beer licence (off).

An excise licence to sell by retail at a house situated at table beer, to be consumed off the premises, in pursuance of the Act 24 & 25 Vict. c. 21, s. 3.

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* NOTE BY EDITORS.—*If the licence be an early-closing licence, add to Forms A., C., D., H. and L., or any of them, as the case may be, as a separate paragraph:* The premises in respect of which this licence is granted shall be closed at night one hour earlier than the ordinary hour at which such premises would be closed under the provisions of the Licensing Act, 1872-1874. *Similarly, if the licence be provisionally granted or confirmed under sect. 22 of the Act of* 1874, *add:* This licence is granted [*or* confirmed] provisionally, and is not of any validity until it has been declared to be final by an order of the licensing justices.

G.

Wine licence to shopkeeper (off.)

An excise licence to sell by retail at a shop situated at wine, to be consumed off the premises, in pursuance of the Act 23 Vict. c. 27, s. 3, and acts amending the same.

H.

Licence for wine to a refreshment house-keeper, confectioner, or eating house keeper (on or off).

An excise licence to sell by retail at a house situated at wine, to be consumed either on or off the premises, in pursuance of the Act 23 Vict. c. 27, ss. 7, 8, and acts amending the same.

If the licence is a six-day licence add as a separate paragraph:

The premises in respect of which this licence is granted shall be closed during the whole of Sunday.

I.

A licensed dealer's additional spirit licence (off).

An ADDITIONAL *excise licence to sell* by retail at a shop situated at spirits, to be consumed off the premises, in pursuance of the Act 24 & 25 Vict. c. 21, s. 2.

K.

Licence for liqueurs in shops (off).

An excise licence to sell by retail at a shop situated at liqueurs, to be consumed off the premises, in pursuance of the Acts 11 & 12 Vict. c. 121, and 23 & 24 Vict. c. 114, and acts amending the same.

L.

Licence for sweets to a refreshment house keeper, confectioner, or eating house keeper (on or off).

An excise licence to sell by retail at a house situated at sweets, to be consumed either on or off the premises, in pursuance of the Act 6 Geo. 4, c. 81, and acts amending the same.

If the licence is a six-day licence add as a separate paragraph:

The premises in respect of which this licence is granted shall be closed during the whole of Sunday.

M.

Sweets licence to shopkeeper (off).

An excise licence to sell by retail at a shop situated at sweets, to be consumed off the premises, in pursuance of the Act 6 Geo. 4, c. 81, and acts amending the same.

FORMS SUPPLIED BY EDITORS.

Form 1.

Order of County Licensing Committee under Sect. 32 of Act of 1874. See p. 158.

—— } We the undersigned justices of the peace for the said
to wit. } county, being the licensing committee therefor, present at a meeting specially convened for the purpose of considering all the cases within the said county in respect of which it may be incumbent upon us to make orders in pursuance of section 32 of the Licensing Act, 1874: Do order and declare that the following parishes, hamlets, townships or collections of houses shall, for the purpose of the provisions of the said act with respect to the closing of premises for the sale by retail of intoxicating liquors, be deemed to be part of the towns adjacent thereto in that behalf respectively mentioned, and the boundaries of such towns as so increased, shall be for such purpose as aforesaid the boundaries in that behalf specified:

Parishes, hamlets, townships or collections of houses.	Towns of which they are declared to be part.	Boundaries of such towns as so increased.

And we do further by this order determine the following parishes, hamlets, townships, places or areas, having a population of not less than one thousand inhabitants, to be, by reason of the density of such population, populous places, and the boundaries of such populous places shall be the boundaries in that behalf respectively specified:

Parishes, &c. declared to be populous places.	Boundaries of the same.

Given under our hands this day of 187 .

*** *This order should be made not later than* 1*st September*, 1874, *and as soon as may be after each census.*

Form 2.

Precept appointing General Annual Licensing Meeting. See p. 34.

To *X. Y.*, clerk to the justices of the division of the county of [*or* of the borough of].

County [*or* borough] of to wit. } We the undersigned, being justices for the said county [*or* borough, *or* a majority of the justices for the said] present at petty sessions, hereby appoint that the general annual licensing meeting for the licensing district shall be holden on the day of 187 , at o'clock in the at in the said county [*or* borough]. And we hereby require you within five days from the receipt hereof to order the proper police constables within this division [*or* borough] to affix on the door of the church or chapel, or if there shall be no church or chapel on some other public and conspicuous place within their respective districts, a notice of the day, hour and place at which the general annual licensing meeting is hereby appointed to be holden: And we also require you to send by post the same notice to each justice of the peace acting for the licensing district [*or* for the borough of], and to every person holding a magistrates' licence for the sale of intoxicating liquors, and to every person holding a billiard licence, and to every person who has given notice of his intention to apply for any such licence.

Given under our hands the day of 187 .

*** *A similar precept is necessary for adjourned and special licensing meetings, but notices of adjournments need not be sent to applicants for renewals not required to attend. See Act of* 1874, *s.* 26, *p.* 130.

Form 3.

Order to Police Constable to affix Notices. See p. 35.

I, *X. Y.*, clerk to the justices of the petty sessional division of in the county of [*or* of the borough of], do hereby order you to affix or cause to be affixed on the door of the church or chapel, or if there shall be no church or chapel on some other public and conspicuous place within your district, the notice sent herewith.

To *A. B.* police constable stationed at .

*** *The notice enclosed can be easily adapted from the precept.*

Form 4.

Notice of Application for New Licence. See p. 127.

To *A. B.*, one of the overseers of the parish [township *or* place] of and to *C. D.*, superintendent of police of the district, and to all whom it may concern.

I [*here set forth name and address of applicant in full*] do hereby give notice that it is my intention to apply at the general annual licensing meeting for the [*name of division of county*] licensing district of the county of [*or* for the licensing district of the borough of in the county of], to be holden at in the said county, on the day of next ensuing, for a licence to sell by retail all intoxicating liquors [*or particular liquors* only] at the house [*or* shop] and premises situate in Street [and numbered] in the parish of in the said county [*or* borough], and known as [*name or sign, if any*] to be drunk [*or* not to be drunk, *as the case may be*] in the said house [*or* shop] and [*or* or] on the said premises.

Given under my hand this day of 187 .

*** *This notice must be given twenty-one days before the application, and advertised in the local newspaper in the third or fourth week before the application. A like notice must, twenty-eight days before the application, be affixed on the premises, and on the church door for two consecutive Sundays. If the application be for a provisional grant, the words* "a provisional grant of" *may be inserted before* "a licence."

Form 5.

Notice of Application for a Transfer to a New Person. See p. 127.

To *A. B.*, one of the overseers of the parish [township *or* place] of and to *C. D.*, superintendent of police of the district, and to all whom it may concern.

I, *E. F.* [*or* we, the executors *or* administrators of the late *E. F.*, *or* I being the heir of the late *E. F.*, *or* I being the trustee of the property of *E. F.* bankrupt, *or* I being the trustee for liquidation by arrangement of the affairs of *E. F.*], being authorized by virtue of the licence granted to me [*or* him] at the general annual licensing meeting [*or* transferred to me *or* him at the special session] held at on the day of 187 [*date of last renewal or transfer*], to sell by retail all intoxicating liquors [*or particular liquors* only *as the case may be*] at the house [*or* shop] and

premises situate in Street [and numbered] in the parish of in the county of [*or* borough of], and known as [*name or sign, if any*] to be drunk [*or* not to be drunk, *as the case may be*] in the said house [*or* shop] and [*or* or] on the said premises, do hereby give notice that it is my intention to apply at the special session appointed for the [*name of division of county*] licensing district of the county of [*or* for the licensing district of the borough of in the county of], to be holden at in the county of on the day of 187 for permission to transfer the above-mentioned licence to *G. H.* [*full name, or in the case of executors, trustees, &c., or one of them intending to hold the licence* to us the said *or* to me the said] now residing at in the county of and for six months preceding the date hereunder written having followed the trade or calling of a .

Given under my [*or* our] hand [*or* hands, *or* given under the hand of me, *L. M.*, duly authorized in that behalf by the said *E. F.*] this day of 187 .

*** *This notice must be given fourteen days before the special session.*

Form 6.

Notice of Application for a Transfer to New Premises.

See p. 127.

To *A. B.*, one of the overseers of the parish [township *or* place *in which the new premises are situated*], and to *C. D.*, superintendent of police of the district, and to all whom it may concern.

I, *E. F.* [*name and address in full*], being authorized by virtue of the licence granted to me at the general annual licensing meeting [*or* transferred to me at the special session] held at on the day of 187 [*date of last renewal or transfer*], to sell by retail all intoxicating liquors [*or particular liquors* only] at the house and premises [*or* shop and premises], situate [*or, if demolished,* lately situate] in Street [and numbered] in the parish of in the county [*or* borough] of and known [*or* formerly known] as [*name or sign, if any*], to be drunk [*or* not to be drunk] in the said house [*or* shop] and [*or* or] on the said premises, do hereby give notice that it is my intention to apply at the special session appointed for the [*name of division of county*] licensing district of the county of [*or* for the licensing district of the borough of in the county of], to be holden at in the county of

on the day of 187 for permission to transfer the above-mentioned licence to the house [*or* shop] situate in Street [and numbered], in the parish of in the said county [*or* borough], and known as [*name or sign, if any*] for the purpose of selling by retail all intoxicating liquors [*or particular liquors* only], at such last-mentioned house and premises [*or* shop and premises], to be drunk [*or* not to be drunk, *as the case may be*] in such last-mentioned house [*or* shop] and [*or* or] on such last-mentioned premises.

Given under my hand this day of 187 .

*** *This notice must be given twenty-one days before the special session, and advertised in the local newspaper in the third or fourth week before the application. A like notice must, twenty-eight days before the application, be affixed on the new premises and on the church door for two consecutive Sundays.*

Form 7.

Notice of Application for a Removal. See p. 136.

To *A. B.*, one of the overseers of the parish [*or* township *or* place *to which the licence is to be removed*] of and to *C. D.*, superintendent of police of the district [*to which the licence is to be removed*], and to all whom it may concern.

I, *E. F.* [*set forth name and address in full*], do hereby give notice that it is my intention to apply at the general annual licensing meeting for the [*name of division to which the licence is to be removed*] licensing district of the county of [*or* for the licensing district of the borough of in the county of], to be holden on the day of next ensuing, at in the said county, for the removal of a licence now in force in respect of the house [*or* shop] and premises [*from which the licence is to be removed*] situate in Street [and numbered], in the parish of in the said county [*or* in the borough of in the said county], and known as [*name or sign if any*], and now held by [*or* by me the said *E. F.*] for the sale of all intoxicating liquors [*or particular liquors* only] to be drunk [*or* not to be drunk] in the said house [*or* shop] and [*or* or] on the said premises, from the above-mentioned house [*or* shop] and premises, to the house [*or* shop] and premises [*to which the licence is to be removed*] situated in Street [and numbered] in the parish of in the said county [*or* in the borough of in the said county], and known as [*name or sign, if any*], for the purpose of selling by retail all intoxicating

liquors [*or particular liquors* only] at such last-mentioned house and premises [*or* shop and premises] to be drunk [*or* not to be drunk, *as the case may be*] in such last-mentioned house [*or* shop] and [*or* or] on such last-mentioned premises.

Given under my hand this day of 187 .

*** *This notice must be given twenty-one days before the application, and advertised in the local newspaper in the third or fourth week before the application. A like notice must, twenty-eight days before the application be affixed on the premises to which the licence is to be removed and on the church door for two consecutive Sundays. A copy of the notice must also be sent to the owner, or mortgagee receiving the rent, of the premises from which the licence is to be removed. It may be adapted to a provisional application in the same way as Form* 4.

Form 8.

Order sanctioning Removal. See p. 136.

[*As in Official Form* 1, *down to paragraph* (*c*), *and proceed*]: Hereby sanction the removal of a licence now held by [*name of person and description of licence, as in Form* 7] in respect of [*house where now in force, as in Form* 7] to [*name of transferee*] to be held in respect of [*new house*], and do hereby grant to the said [*proceed as in Official Form* 1, *to the end*].

Form 9.

Notice to attend upon Application for Renewal. See p. 129.

To *A. B.* of .

We, the undersigned justices of the peace for the county [*or* borough of in the county of], having jurisdiction to grant licences in the district of the said county [*or* in the said borough], do hereby require you the said *A. B.*, in the event of your applying for the renewal of a licence to sell intoxicating liquors by retail at the general annual licensing meeting [*or, if the adjournments be fixed*, at an adjournment of the general annual licensing meeting] for the said district [*or* borough], to be holden at on the day of next ensuing, to attend in person at the said [adjournment of the *or*] general annual licensing meeting.

Given under our hands this day of 187 .

Form 10.

Notice of Opposition to Renewal. See p. 129.

To *A. B.* of .

I, *C. D.*, of do hereby give you the said *A. B.* notice that in the event of your applying for the renewal of a licence to sell intoxicating liquors by retail, at the general annual meeting for the licensing district of the county of [*or* for the licensing district of the borough of in the county of], to be holden at on the day of 187 or at any adjournment thereof, I intend to oppose the renewal of the same, and the grounds on which I intend to oppose such renewal are in general terms as follows: [*state grounds.*]

Given under my hand this day of 187 .

*** *This notice must be given not less than seven days before the general annual meeting.*

Form 11.

Temporary Authority to sell Liquors under 5 & 6 Vict. c. 44. See p. 42.

At the petty sessions holden at on the day of 187 for the division of in the county of [*or* for the borough of].

We, being of the justices acting for the said division [*or* borough], and being the majority of those at the said sessions assembled, hereby authorize *A. B.* of [*description and address*] to sell such intoxicating liquors on such premises, and in such manner as in the within licence mentioned until the now next ensuing special session for licensing purposes.

*** *This form must be indorsed on the licence transferred. A similar form may be used for an authority under s.* 15 *of the Act of* 1874.

Form 12.

Notice of Appeal against Conviction. See p. 140.

To Esq., of and Esq., of justices of the peace for the county [*or* town].

I, *A. B.*, of publican [*or as the case may be*], hereby give you notice that I intend to appeal to the next quarter sessions of

the peace holden for the county of [*or* the borough of] [*or*, *if the next sessions are held within fifteen days from the conviction*, to the quarter sessions of the peace for subsequent to the next sessions as aforesaid], against a conviction of me the said *A. B.* before you, Esq., and Esq., justices, for that I the said *A. B.* [*state offence as in conviction*], and the ground of my appeal is as follows [*set out grounds*].

*** *This notice must be given within seven days after the conviction to the convicting justices, and also to the prosecutor.*

Form 13.

Notice of Appeal against a Refusal to Renew or Transfer.

See p. 48.

To Esq., of and Esq., of justices of the peace for the county of

I, *A. B.*, of publican [*or as the case may be*], hereby give you notice that I intend to appeal to the next quarter sessions of the peace holden for the county of [*or*, *if the next sessions are held within twelve days after the refusal*, to the quarter sessions of the peace holden for the county of subsequent to the next sessions as aforesaid], against the refusal by you to grant [*or* transfer] to me a renewal of my licence [*or* a licence] for the sale by retail of all intoxicating liquors [*or particular liquors* only] at the house [*or* shop] and premises situate in Street [and numbered], in the parish of in the county [*or* borough] of and known as [*name or sign, if any*], to be drunk [*or* not to be drunk, *as the case may be*] in the said house [*or* shop], and [*or* or] on the said premises [*if the appeal is against a refusal to transfer proceed*], now held by of publican [*or as the case may be*], and the cause, matter and ground of my appeal are as follows [*state grounds of appeal*].

Given under my hand this day of 187 .

*** *This notice must be given to all the justices acting in the refusal within five days therefrom.*

Form 14.

Recognizance to prosecute Appeal.

See pp. 48, 140.

—— } Be it remembered that on the day of in the
to wit. } year of our Lord, 187 *A. B.* [*the appellant*], of publican [*or as the case may be*], *C. D.* [*surety*], of [*address and description*] and *E. F.* [*surety*], of [*address and description*], per-

sonally came before me, one of her Majesty's justices of the peace for the said county [*or* place], and acknowledged himself to owe to our sovereign lady the queen the sum of pounds of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said lady the queen, her heirs and successors, if the said *A. B.* shall fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at . Before me,

J. S.

Form 15.

Condition when Appeal is against Conviction. See p. 140.

The condition of the within-written recognizance is such that whereas the said *A. B.* has given notice of appeal against a conviction of him the said *A. B.*, bearing date the day of 187 before Esq., and Esq., justices, [*or* before me, the within mentioned *J. S.*, and Esq., *as the case may be*,] for that the said *A. B.* [*state offence*], if the said *A. B.* shall appear at the next quarter sessions of the peace, to be holden in and for the said county [*or* borough] of and try such appeal and abide the judgment of the court thereupon, and pay such costs as shall be by the court awarded, then the said recognizance to be void or else to stand in full force and virtue.

Form 16.

Condition when Appeal is against Refusal to Renew or Transfer. See p. 48.

The condition of the within-written recognizance is such that whereas the within-mentioned *A. B.* has given notice of appeal against a refusal to renew [*or* transfer] a licence for the sale by retail of intoxicating liquors now held by him, [*or if the appellant is the proposed transferee*, now held by *X. Y.*, of ,] if the said *A. B.* shall appear at the next quarter sessions of the peace to be holden in and for the said county [*or if the appeal is against a refusal to renew or transfer by borough magistrates*, for the county of] and try such appeal and abide the judgment of the court thereupon, and pay such costs as shall be by the court awarded, then the said recognizance to be void or else to stand in full force and virtue.

*** *The recognizance conditioned to try appeal against refusal to renew or transfer must be entered into within five days from the refusal to renew or transfer. The recognizance in an appeal against a conviction must be entered into immediately after the notice of appeal.*

Form 17.

Order as to Sunday Afternoon Closing. See p. 101.

We, *A. B.*, *C. D.*, *E. F.*, being justices of the peace for the county [*or* borough of in the county of], having jurisdiction in the licensing district of the said county [*or* in the licensing district of the said borough], to grant new licences for the sale of intoxicating liquors, do hereby for the purpose of accommodating the hours of closing on Sunday, Good Friday and Christmas Day to the hours of public worship in the [parish of *or other* place] within our said district, direct and order that all premises on which intoxicating liquors are sold or exposed for sale by retail within the said [*place*] shall remain closed until one o'clock in the afternoon on Sunday, Christmas Day and Good Friday.

Given under our hands this day of 187 [*the actual day of making the order*].

*** *This order must be advertised, and the advertisement may contain appended to the order:* N.B. This order comes into operation at the expiration of one month from the date thereof, that is to say, on the day of 187 .

Form 18.

Order of Exemption from Closing. See p. 106.

I, *A. B.*, commissioner, &c. [*or* we, *C. D.*, *E. F.*, justices of the peace for the county *or* borough of in the county of], being the local authority having jurisdiction [in the metropolitan police district *or* the City of London and the liberties thereof, *or* in the licensing district of the said county, *or* in the licensing district of the said borough] to grant orders of exemption from the provisions of the law respecting the closing of premises licensed for the sale by retail of intoxicating liquors: Deeming that sufficient evidence has been produced before me [*or* us], that it is desirable [*or* necessary] for the accommodation of a considerable number of persons attending the market [*or* following the trade of], do hereby grant to *G. H.*, holding a licence for the sale by retail of all intoxicating liquors [*or* of wine, *or* of beer, *or* of cider] at the house [*or* shop] and premises situated in Street [and numbered] in the parish of in the said county [*or* borough], and known as [*name or sign, if any*], to be drunk at the said house [*or*

shop] and on the said premises, such premises being in the immediate neighbourhood of [such market *or* of the place where such persons follow such trade as aforesaid], an order exempting the said *G. H.* from the provisions of the law respecting the closing of premises licensed for the sale of intoxicating liquors by retail on [every day except and at all times, *or as the order may be*] except between the hours of one and two of the clock in the morning. And I [*or* we] do order that the said house [*or* shop] and premises be exempted from the said provisions on the days and at the times above mentioned accordingly.

Given under my [*or* our] hand [*or* hands] this day of 187 .

[*If in the metropolitan police district:* Approved by me one of her Majesty's principal secretaries of state, this day of 187 . *If in the city of London:* Approved by me Lord Mayor of the City of London, on the day of 187].

Form 19.

Notice of Order of Exemption. See p. 107.

This house [*or* shop] is permitted to be open from of the clock at night to one of the clock in the morning [and from two of the clock in the morning to of the clock in the morning.]

By order of the commissioner, &c., [*or* Esq. and Esq. justices of the peace for the county *or* borough of].

Form 20.

Occasional Licence, exempting from Closing. See p. 111.

I, *A. B.*, commissioner, &c. [*or* we, *C. D.*, *E. F.*, justices of the peace for the county *or* borough of in the county of], being the local authority having jurisdiction [in the metropolitan police district *or* the City of London and the liberties thereof, *or* in the licensing district of the said county, *or* in the licensing district of the said borough] to grant occasional licences exempting from the provisions of the law respecting the closing of premises licensed for the sale by retail of intoxicating liquors, do hereby grant to *G. H.*, holding a licence for the sale by retail of all intoxicating liquors [*or* of wine, *or* of beer, *or* of cider] at the house [*or* shop] and

premises situated in Street [and numbered] in the parish of in the said county [*or* borough], and known as [*name or sign, if any*], to be drunk at the said house [*or* shop] and on the said premises, an occasional licence exempting the said *G. H.* from the provisions of the law respecting the closing of premises licensed for the sale by retail of intoxicating liquors on the occasion of [a public fête *or* ball, *or as the case may be*], between of the clock at night and of the clock in the morning.

Given under my [*or* our] hand [*or* hands] this day of 187 .

Form 21.

Notice to Owner of Conviction. See p. 142.

To *A. B.* of

I, *C. D.*, of clerk to the licensing justices of the district of the county of [*or* of the borough of in the county of] do hereby give you *A. B.* notice, that *E. F.*, holder of a licence for the sale by retail of intoxicating liquors at a house [*or* shop] and premises situate in Street [and numbered] in the parish of in the said county [*or* borough], and known as [*name or sign, if any*], was convicted on the day of 187 before Esq., and Esq., justices of the peace for the said county [*or* the said borough], for that he the said *E. F.* did on the day of 187 [*state in the words of the conviction, the offence tending to disqualify*].

Given under my hand this day of 187 .

Form 22.

Order of Disqualification of Premises. See p. 114.

—— } Whereas on the licence of *A. B.* for the sale by retail of
to wit. } intoxicating liquors at the house [*or* shop] and premises situated in Street [and numbered] in the parish of in the county of [*or* borough of in the county of] and known as [*name or sign, if any*] two convictions have been recorded, to wit, one conviction on the day of 187 before Esq., and Esq., justices of the peace for the said county [*or* borough], for that on the day of 187 he the said *A. B.* did [*state recordable offence*], and one conviction on the day of 187 before Esq., and Esq., justices of the peace for the said county [*or* borough], for that on the day of 187

he the said *A. B.* did [*state recordable offence*]: And whereas the said *A. B.* was this day convicted before us Esq., and Esq., justices of the peace for the said county [*or* borough], for that on the day of 187 he the said *A. B.* did [*state recordable offence*]: We Esq., and Esq., justices of the peace for the said county [*or* borough], do order that the said house [*or* shop] and premises shall be disqualified from receiving any licence for the sale of intoxicating liquors by retail for a term of two years from the date of the conviction last aforesaid [*or* shall not be disqualified from, *&c.*].

As witness our hands and seals this day of 187 .

*** *This order is under s.* 30, *subs.* 2, *of the Act of* 1872, *which appears to be unaffected by s.* 13 *of the Act of* 1874.

Form 23.

Notice to Owner of Order of Disqualification of Premises.

See p. 143.

To *A. B.* of

Take notice, that there will be holden on the day of next ensuing, at of the clock in the a petty sessions for the division of the county of [*or* for the borough of in the county of], at which you the said *A. B.* may appear and appeal against the order of disqualification dated the day of 187 a copy of which is delivered herewith.

By order of the justices,

C. D., clerk of the petty sessional division of

Dated the day of 187 .

*** *Annex a copy of the Order of Disqualification, Form* 22.

Form 24.

Notice to Owner of Disqualification of Premises.

See p. 116.

To *A. B.* of

Whereas four convictions have within the five years last past been recorded in the register of licences for the licensing district of the county of [*or* for the borough of in the county of], against the house [*or* shop] and premises situated in Street [and numbered] in the parish of in the said county [*or* in the said borough] known as [*name or sign, if any*], to wit, one conviction on the day of 187 before Esq., and

Esq., justices of the peace for the said , for that *C. D.* on the day of did [*state first conviction against premises*]; one conviction on the day of 187 before Esq., and Esq., justices of the peace for the said , for that *E. F.* on the day of 187 did [*second such conviction*]; one conviction on the day of 187 before Esq., and Esq., justices of the peace for the said , for that *G. H.* on the day of 187 did [*third such conviction*]; and one conviction on the day of 187 before Esq., and Esq., justices of the peace for the said , for that *I. K.* on the day of 187 did [*fourth such conviction*]: And whereas the said house [*or* shop] and premises have thereupon become disqualified for one year from receiving any licence for the sale of intoxicating liquors by retail, take notice, that there will be holden on the day of next ensuing, at of the clock, in the a petty sessions for the division of the said county [*or* for the said borough] at which you the said *A. B.* may appear and appeal against such disqualification.

By order of the justices,

L. M., clerk of the petty sessional division of .

Dated the day of 187 .

Form 25.

The same upon two Forfeitures. See p. 116.

To *A. B.* of

Whereas there have been forfeited within the period of two years two licences for the sale of intoxicating liquors, held in respect of the house [*or* shop] and premises situated in Street [and numbered], in the parish of in the county of [*or* in the borough of in the county of] known as [*name or sign, if any*], the one licence having been forfeited by reason of the conviction of *C. D.* of two offences recorded upon the said licence, to wit, one conviction [*and so on as in Form* 24], and a third conviction on, &c., before, &c., of [*recordable offence*]; the other licence having been forfeited by reason of the conviction of *E. F.* of two convictions recorded on the licence last aforesaid, to wit [*as before, and continue as in preceding form from* And whereas *to the end*].

FORM 26.

Register of Licences. See p. 119.

Licensing district of in the county of [*or* of the borough of in the county of].

Parish [*or* township] of

No. 1.

House [*or* shop] situate in Street, and known as .

Licensed Persons.			Owners and Persons interested.		Convictions against the licensed Persons and the Effect of repeated Convictions of the same Licence-holder, on the Licence and on the Premises.		Convictions against the licensed Premises and the Effect of repeated Convictions, whether of the same or a different Licence-holder, on the Premises.	
Date of Entry.	Name.	Description of Licence and in what way granted.	Date of Entry.	Name and Address of Party interested and how.	Date of Entry.	Convictions and Effect.	Date of Entry.	Convictions and Effect.
Sept. 187 .	*A. B.*	Public-house licence newly granted.	Sept. 187 .	*E. F.*, of endorsed as owner on licence.	Jan. 187 .	*A. B.* on day of convicted before Esq. and Esq., justices, of [*state offence*], and fined 20*s.* or in default days. Conviction recorded on the licence.	Oct. 187 .	*A. B.* on *&c.* [*as before*].
Aug. 187 .	Same.	Same renewed.	Aug. 187 .	*G. H.*, of as mortgagee, entitled to notice of convictions.			Dec. 187 .	*C. D.* on *&c.*
Feb. 187 .	*C. D.*	Same transferred.					Feb. 187 .	*P. Q.* on *&c.*
Aug. 187 .	Same.	Licence for beer, to be drunk on the premises, newly granted.	Sept. 187 .	*I. K.*, of endorsed as owner on licence.	Oct. 187 .	*A. B.* on *&c.*, convicted of *&c.* [*as before*].	Apr. 187 .	*R. S.* on *&c.* Premises disqualified by order of Esq. and Esq., justices, on the day of for 1 year.
					Nov. 187 .	*A. B.* on *&c.*, convicted of *&c.* [*as before*]. *A. B.*'s licence forfeited and house disqualified for two years.		

RULES AND REGULATIONS OF

Middlesex Quarter Sessions under the Licensing Act, 1872, *made at the January Adjourned Sessions*, 1873.

1. When the licensing justices, at a general annual licensing meeting for any division in Middlesex, or at any adjournment thereof, shall have provisionally granted any new licence or certificate under the powers of the Licensing Act, 1872, the applicant for the confirmation of such licence or certificate shall, within seven days from the date of such grant, transmit the licence or certificate to the clerk of the peace for the county, at the Sessions House, Clerkenwell Green, for the purpose of being submitted to the county licensing committee for confirmation.

2. The licensing justices shall, within seven days from the date of the grant of such provisional licence or certificate, send to the clerk of the peace every memorial and other evidence, if any, which may have been submitted to the licensing justices in support of or against the application.

3. Every person intending to oppose the confirmation of any such provisional licence or certificate before the county licensing committee, shall, within seven days after the grant of such provisional licence or certificate, give notice to the applicant, and also to the clerk of the peace, by registered letter, of his intention to oppose the confirmation of such provisional licence or certificate. Every such notice of intention to oppose shall contain the name and address of the person giving the notice.

4. Every person giving the requisite notice of opposition shall, by himself and one surety, within three days after the notice shall have been given, enter into recognizances in the sum of 20*l.* each before a justice of the peace of the county of Middlesex, conditioned for the payment of all costs that may be ordered by the county licensing committee to be paid by such person.

5. In unopposed cases it will not be necessary to prove that the notices required by the licensing acts have been duly given.

6. The clerk of the peace shall, by direction of the chairman of the committee, convene a meeting of the county licensing committee

for some day not earlier than the 15th day of April in each year, for the purpose of considering the confirmation of such provisional licences or certificate, and shall give notice of such meeting by a registered letter to each applicant, and to every person who shall have given due notice of opposition, and shall have duly entered into recognizances as required by these rules.

7. Each applicant must, unless he shall show lawful excuse for his absence, attend the meeting of the committee in person; and any person who has appeared before the licensing justices and opposed the grant of a new licence or certificate, and who has complied with these regulations, and no other person, may appear before the county licensing committee, and may oppose the confirmation of such grant, and the county licensing committee may in their discretion award such costs as they may deem just to any or either of the parties to the proceedings before them.

8. If any person who shall have given notice of an intention to oppose the confirmation of any provisional licence or certificate before the county licensing committee, shall fail to appear before the committee, the committee may in their discretion award to the applicant such costs and expenses as he may have incurred in consequence of such notice, and the same shall be paid by the person or persons so failing to appear.

9. The amount of all costs payable under these rules and regulations shall, unless the licensing committee shall otherwise direct, be ascertained and settled by the clerk of the peace.

10. Every applicant for the confirmation of a new licence or certificate shall pay to the clerk of the peace the following fees:—In respect of an application for a licence the sum of one guinea; in respect of an application for a certificate the sum of ten shillings and sixpence for his services and expenses connected with such application.

11. Applicants for the confirmation of provisional licences or certificates, and persons opposing, may appear either by counsel, by attorney, or in person; and the ordinary rules of procedure in applications before the justices in quarter sessions are to be observed, so far as practicable, before the committee.

By the court,

RICHD. NICHOLSON,

Clerk of the Peace.

[An order as to the fee payable for the registration of "persons other than owners" is not inserted, as the section under which it was made is repealed. See now Act of 1874, s. 29, p. 114].

INDEX.

ABSENCE,
of applicant for licence through sickness, &c., 18, 38.
applied to beer licences, 74.

ACCESSORY,
occupier of premises illicitly used liable as for illicit sale, 84.
penalty on persons found on premises, 118.

ACCIDENTAL OMISSION,
to give notice of application for licence, how remedied, 74.

ACTION AGAINST JUSTICES,
for refusing licence does not lie, 34.
limitation of time for, 52.

ACTS OF PARLIAMENT. *See* TABLE OF STATUTES.

ADDITIONAL LICENCES,
spirit-dealer's retail spirit, 7, 148, 152.
spirit-dealer's retail liqueur, 7, 149, 152.
wine-dealer's retail wine, 7, 152.
beer-dealer's retail beer, 8, 65.
grantable at special sessions, 126.

ADJACENT PLACES,
may be included in town, 158.

ADJACENT PREMISES,
penalty on carrying to, in evasion of licence, 85, 86.
conviction may be recorded on licence, 86, 113, 114.

ADJOURNMENT,
of general annual licensing meeting, 35.
public notice of, 37.
no notice to applicant for renewal, 130.
time limited for, 35.
application for licence to, 36.
of appeal against conviction, 140.
no adjournment of appeal against refusal to renew, 50.

ADULTERATION, LAW OF,
at common law, 95.
under Adulteration Acts, 1860 and 1872..95, 96.
decisions under Adulteration Act, 1872..96.
under Excise Act (beer), 96.
under Licensing Act, 1874..95.
repeal of penalties under Licensing Act, 1872..160.

ADVERTISEMENT,
in newspaper on application for new licence, 17, 127.
of order as to Sunday closing, 101.

AGENT,
when applicant for new licence may appear by, 18, 38.

AGGRIEVED PARTY,
within meaning of appeal clause, 49.

ALE. *See* BEER.

ALE-HOUSE,
what is, 31, 32.

ALE-HOUSE LICENCE. *See* PUBLIC-HOUSE LICENCE.

ANALYSIS OF LIQUOR,
under Adulteration Acts, 95, 96.

"ANNUAL VALUE,"
for beer and wine licences in lieu of "rateable value," 133.
what is, "annual value," 133.
how ascertained, 133.
costs of valuation may fall on applicant, 133.

APPEAL,
against refusal to grant licence abolished, 170.
as to licences under Act of 1869..158.
against refusal to renew or transfer, provisions for, 48.
exclusion of justices below from hearing of, 49.
notice to justices below of, 50.
costs of, 51.
no power to adjourn, 50.
continuance of licence pending, 141.
against conviction or order, 140.
time limited for, 140.
power to adjourn, 140.
costs of, in discretion of court, 140.
continuance of licence pending, 141.
against order of disqualification of premises, by owner, 143.
against record of conviction on licence, 114.

APPLICATION FOR NEW LICENCE.
notice of, 17, 127.
form of, 184.
failure to give, 18, 74.

APPREHENSION,
of person found on premises in closing hours, 105.
of person selling spirits without licence, 83.
of person found where illicit sale, 118.

ATTENDANCE,
of applicant for renewal, requirement of, 129.
for special cause only, 130.

AUTHENTICATION OF LICENCE,
by seal of justices, 128.

AUTHORITY,
See LICENSING AUTHORITY and LOCAL AUTHORITY.

BALLS,
occasional licence for sale at, 17, 113.

BANKRUPTCY,
of licence holder, transfer to trustees upon, 21, 40, 81.
saving for trustees selling without licence, 81.

BEER,
licence for sale of, to be drunk on premises, 8, 61.
not to be drunk on premises, 8, 57.
beer licence authorises sale of cider, 9, 61.
table-beer licence, 9, 65.
beer-dealer's retail beer licence, 9, 65.
value qualification for, 65.
grantable at special sessions, 65, 66, 126.
black beer or spruce licence, 150.
beer not an "exciseable liquor," 47.
beer excise licence, when preliminary to others, 9.
what is retail of, 7.

BETTING-HOUSE ACT,
penalty for keeping house in contravention of, 93.

BILLET,
provisions as to, applied to beer-houses, 59.

BILLIARD LICENCE,
grantable at annual licensing meeting, 157.
no appeal against refusal of, 157.
application of Licensing Act, 1872, to holder of, 157.
list of offences against tenor of licence, 157.

BLACK BEER. *See* BEER.

BOARDING-HOUSES,
not "inns," 31.
whether required to be licensed, 82.

BOARDS,
descriptive of character of licence to be fixed up, 87.
form settled by licensing justices, 88.
penalty for not fixing up, 88.
excise penalty, 88.

BONA FIDE TRAVELLER,
saving for sale to, 102, 103.
meaning and origin of "bonâ fide," 104.

BOROUGHS,
meaning of word in Licensing Act, 1872..154.
where ten justices, original authority in, 122.
confirmation of new licences in, 123.
where not ten justices, original authority in, 123.
confirmation of new licences in, 123.
concurrent jurisdiction of borough and county justices, 24.
appeal from borough justices to county (renewals), 48.
See LICENSING COMMITTEE.

BOTTLES,
sale of spirits and liqueurs in, 7.
of wine in, 9, 67.

BREWERS, DISTILLERS AND MALTSTERS,
may not take part in licensing meeting, 145.
nor in hearing informations, 145.
shareholder disqualified, 145.
penalty for acting recoverable by action, 146.

BREWSTER SESSIONS. *See* GENERAL ANNUAL MEETINGS and SPECIAL SESSIONS.

BRIBING CONSTABLE,
penalty on, 28, 92.

BROTHEL,
forfeiture and disqualification upon conviction for keeping, 28, 91.
whether summary conviction for, 92.

BURDEN OF PROOF,
on seller of liquor to prove licence, 84.
on defendant generally, 138.
as to sale to alleged traveller, 103.
formerly on informer, 103.

CANTEEN,
how licensed for sale of spirits, 151.

CASE,
for superior court, licensing justice may not state, 140.
quarter sessions may, 141.

CERTIFICATE,
of magistrates identical with magistrates' licence, 9.
of ratepayers abolished, 61.
of character for spirit grocer (Ireland), 166.

CERTIORARI,
how far excluded, 141.

CHARACTER,
certain licences to be refused only in case of bad, 72, 76.
consideration of in case of provisional grant, 125.

CHILDREN,
under sixteen, sale of spirits to, penalty for, 86.

CHRISTMAS DAY,
closing hours on, 98.
Christmas Eve, similar, 98.

CHURCH,
accommodation of closing hours to hours of, 101.
And see PUBLIC WORSHIP.

CHURCH DOOR,
notices to be fixed on, 17, 35, 37, 71.

CIDER,
licence for sale of, to be drunk on premises, 8, 61.
not to be drunk on premises, 8, 60.
included in beer licence, 9.
what is retail of, 7.

CINQUE PORTS,
county justices to have no jurisdiction in, 38.

CLERK OF THE LICENSING JUSTICES,
meaning of term in Licensing Act, 1872..154.
to keep register of licences, 119, 120.
to alter owner's name in, 119, 120.
copy of entry in, signed by, evidence, 145.
to serve notice of recordable convictions on owner, 142.
upon mortgagee, 144.
fee to, for registration of owner, 144.

CLERK OF THE PEACE,
to be clerk of county licensing committee, 121.

CLOSING HOURS,
fixing of, by Act of 1874..23, 97.
penalty for sale in, 101, 102.
old law repealed by Act of 1872..98.
order accommodating to hours of public worship, 101.
not to operate for a month, 101.
form of, 191.
of refreshment-houses, 109.
consumption of liquor in, during, 108.
of refreshment-houses licensed for wine, 110.
saving for sale to traveller, 102.
friends of licensed person, 106.
penalty for being on premises in, 105.
order of exemption from, 106.
on special occasions, 111.
closing in Ireland, 143.
for "spirit grocer," Ireland, 147.
early-closing licence, 135.

CLOSING IN CASE OF RIOT,
by order of two justices, 97.

CLUBS,
whether liquors may be sold in, without licence, 82.

COCCULUS INDICUS,
adulteration with, excise penalty, 96.

COMMON LAW,
no licences at, 1, 31.
position of inns at, 31.

COMMUNICATION,
between licensed premises and place of resort, 27, 87.
forfeiture for making, 87.
by "spirit grocer," Ireland, 168.

CONCURRENT JURISDICTION,
of borough and county justices, 37.
how far abolished by Act of 1872..124.

CONDITIONS,
grant of licence with, how far illegal, 33.

CONFECTIONER,
licence of, to sell wine to be drunk on premises, 9, 68.

CONFIRMATION OF NEW LICENCE,
required for sale of liquor to be drunk on premises, 15, 120, 123.
otherwise not, 16, 126.
in counties, by licensing committee, 15, 120.
in boroughs where ten justices by whole body of justices, 16, 123.
in boroughs where not ten justices by joint committee, 16, 123.
opposition to and costs of opposition, 130.

CONSTABLE,
may enter licensed premises at all times, 117.
qualification of right of entry, 117.
law before and after 1872..117.
no qualification as to refreshment-houses, 110.
may enter unlicensed place on search warrant, 118.
may apprehend person found there, 118.
must expel drunken persons, 94.
may apprehend person on premises in closing hours, 105.
penalty for harbouring, 92.
for giving liquor to, 92.
master responsible, 92.

CONSTRUCTION. *See* INTERPRETATION CLAUSE.

CONVICTION,
of more than one offence on one day, 145.

CONVICTIONS,
registration of, 119.
special effect of, 27, 28.
division of, into recordable and non-recordable, 26.
recording discretionary, 113, 114.
effect of third recordable conviction, 115.
appeal against. *See* APPEAL—RECORDABLE CONVICTIONS.
appeal against record of conviction, 114.

COPY,
of lost licence obtainable at petty sessions, 44.
of licence wilfully withheld, 111.
of entry in register, evidence, 145.

COSTS,
of opposing confirmation of licence, 130.
of appeal. *See* APPEAL.

COUNTIES,
original authority in, 15, 31.
confirmation of new licences in, by licensing committee, 120.

COURT OF SUMMARY JURISDICTION,
meaning of term, 155.
constitution of, 137.

DATE OF LICENCES,
public-house and beer licences, 39, 59.

DEATH OF LICENCE-HOLDER,
transfer to representatives on, 21, 40.
saving for sale without licence before transfer, 81.

DEBT,
on account of spirits, how far recoverable, 90.
on account of beer and cider irrecoverable, 90.

DEFENDANT,
may give evidence, 138.
burden of proof on, 138.

DESCRIPTIVE BOARD,
to be affixed on premises, 87.
form to be settled by licensing justices, 87, 88.

DESTRUCTION OF LICENSED HOUSE,
transfer of licence to new premises upon, 21, 40.
notice of application for, 21, 128.
form of, 185.

DEVISEE,
of licensed house may obtain transfer, 40.

DINNER,
occasional licence for sale at public dinner, 17, 113.

DISCRETION OF JUSTICES,
under Act of 1828, absolute, 18, 32, 33.
as to transfers, 22, 42.
as to temporary transfers, 43.
under Act of 1869, how limited, 18, 72.
as to transfers, 74.
as to temporary transfers, 74.
must be judicially exercised, 33.
mandamus to enforce such exercise, 33.
mandamus to grant licence refused, 32.
considerations of requirements of neighbourhood should guide, 33.
result of cases as to, 34.
discretion of confirming body, 19, 122.
discretion as to renewals, 20, 129.

DISQUALIFICATIONS FOR HOLDING LICENCE,
enumerated, 11—14.
sheriff's officer or process server, 11, 46, 59.
conviction of felony, 11, 70.
keeping brothel, 11, 28, 91.
selling spirits without licence, 11, 70.
sale of other liquors without licence, 11, 27, 81.
harbouring thieves, 11, 91.
third recordable conviction, 11, 114.
notice to owner of, 12, 13.
of premises on ground of value, 13.
before 1872, beer, 62, 65.
wine, 68, 69.
after 1872..133.
structural adaptation, 132.
no public-house qualification before 1872..13, 132.
qualification after 1872..13, 132.
not for houses licensed before act, 13, 132.

DISQUALIFIED JUSTICES. *See* BREWERS.

DIVINE SERVICE,
accommodation of closing hours to, 101.
See PUBLIC WORSHIP.

DIVISION OF COUNTY,
licensing meeting to be held in each, 14, 30.

DRUNKENNESS,
statute of James repealed, 89.
present law of, 89.
in public place, 88.
coupled with disorder, 88.
cumulative penalty, 88.
hard labour on non-payment of penalty, 89.
permitting of, by licence holder, 89.
sale of liquor to drunken person, 89.
Tippling Acts, 90.
exclusion of drunken person from premises, 94.
penalty for not quitting, 94.

EARLY-CLOSING LICENCE,
in case of sale of liquor to be drunk on premises, 135.
holder to close at night one hour earlier, 135.
condition to be inserted in licence, 135.
notice by holder of, 136.
remission of duty, 136.
form of, 180, n.

EATING-HOUSE,
keeper of, may hold refreshment-house wine licence, 9, 68.
See REFRESHMENT-HOUSE.

EFFACING RECORD OF CONVICTION,
penalty for, 28, 117.

ENTERTAINMENT,
meaning of word in Refreshment-House Act, 68.

ENTRY ON PREMISES.
by constable for enforcement of acts, 117.
See CONSTABLE.

EVASION OF LICENCE,
by allowing drinking on highway, 27, 84.
by conveying liquor off premises, 27, 85.
proof of evasion, 85.
convictions recordable, 27, 85, 86.
of "spirit grocer," Ireland, 167.

EVICTION OF TENANT,
avoidance of disqualification where no power to evict, 143.

EVIDENCE,
must be on oath in case of renewal, 129.
power to administer oath in other cases, 18.
of requirements of neighbourhood, 33.
mandamus to justices to hear, 33.
to prove sale, money need not be proved to pass, 147.
register of, and endorsements upon, licences, receivable as, 145.
defendant and wife may give, 138.

EXCEPTION,
need not be negatived in information, 138.
in favour of traveller, 102.
of prostitute, 90.
of constable, 92.
burden of proof on defendant, 138.

EXCISE,
list of pure excise licences, 7.
excise penalties for sale without licence, 27.
for adulteration of beer, 96.
can be recovered by inland revenue officer only, 83.
not affected by Licensing Act, 1872..151.
distinction between police and excise penalties, 83.
discretion of inland revenue in granting occasional licence, 16, 112.
may alter forms of excise licences, 134.

EXCISEABLE LIQUORS,
meaning of term, 54.
neither beer nor sweets "exciseable liquors," 47.

EXCLUSION,
of drunken person from licensed premises, 94.
of tipplers from shop of "spirit grocer" (Ireland), 168.

EXECUTOR,
saving for sale by, 81.
transfer to, 21, 40.

EXEMPTION,
from closing on special occasions, 111.
See ORDER OF EXEMPTION.

EXPENSES,
of advertisement as to Sunday closing, 101.
of valuation, when paid by applicant, 133.

FAIRS,
sale of liquor at, 53.
occasional licence required, 111, 112.

FALSE MEASURES,
penalty for using, 86.

FALSE NAME,
person found during closing hours giving, 29, 105.
on premises where illicit dealing, 27, 118.

FEES,
on public-house licence, 45, 46.
on wine or beer-house licence, 45, 46.
single licence for many excise licences, 126.
for copy of licence lost, 44.
for registration of licence, 120.
for registration of owner, 144.
for search of register, 120.
penalty for extorting, 45, 120.

FELON,
transfer to owner where conviction of, 144.
See DISQUALIFICATION.

FERMENTED LIQUOR. *See* INTOXICATING LIQUOR.

FETE,
sale of liquor at, 17.
See OCCASIONAL LICENCES.

FIRE,
destruction of premises by, 40.
See TRANSFER.

FORBES MACKENZIE ACT,
repealed schedule of, contained "bonâ fide" traveller, 104.

FORFEITURE OF LICENCE,
on conviction of communicating with unlicensed premises, 86, 87
transfer of licence to owner, 144.
for permitting brothel, 91.
for allowing seditious meeting, 28.
for harbouring thieves, 91.
upon second conviction of sale without licence, 81.
upon third recordable conviction, 114.

FORGERY OF CERTIFICATE,
penalty on, and disqualification, 75.
transfer of licence to owner, 144.

FORMS,
of licence, official, 175—182.
supplied by editors, 182—196.
See the TABLE OF CONTENTS.

FRIENDS,
entertainment of, in closing hours, 106.

GAMING AND UNLAWFUL GAMES,
penalty for permitting, 93.
what is gaming, 93.
what is an unlawful game, 93.
Betting-House Act, 93.
billiards, 94.

GENERAL ANNUAL MEETINGS,
when held, 14, 30.
adjournment of, 14, 35.
public notice of, 14, 37.

GOOD FRIDAY,
sale of liquor on, 98. *See* CLOSING.
on Maundy Thursday, similar hours, 98.

"GROCERS' LICENCES,"
list of so-called, 152.
shopkeeper's spirit or liqueur licence, 148, 149.
shopkeeper's wine licence, 66, 67.
wine dealer's wine licence, 152.
"spirit grocer" in Ireland. *See* IRELAND.

HARBOURING,
prostitutes, 90.
thieves, 91.
constables, 92.

HEARING OF APPLICATION,
considered generally, 18.
for new licence, 18.
for transfer, 21.
discretion of justices at. *See* DISCRETION.
for confirmation of licence, 19.
opposition to, 19.
for renewal, evidence to be on oath, 129.

HEIRS OF LICENSED PERSONS. *See* TRANSFER.

HIGH CONSTABLE,
notice formerly by, of licensing meeting, 34.
superseded by clerk to justices, 35.

HIGHWAY,
drinking on, in evasion of licence, 27, 84.
in Ireland, 167.
drunkenness in, 88.

HISTORY,
of licensing law, 1—6.

HOURS OF CLOSING,
in metropolitan district, 97.
definition of, 98, 158.
in "towns" and "populous places," 97.
definition of, 99, 158.
elsewhere, 98. *And see* CLOSING HOURS.

IBBETSON'S ACT,
brought sale of beer and wine under justices' control, 3.

ILLICIT SALES,
under Act of 1872..80—88.
sale without licence, 80.
no proof of money passing necessary, 147.
liability of occupiers, 84.
of persons found on premises, 118.
in evasion of licence, 84, 85.
sale of spirits to children, 86.
sales by false measures, 86.

ILLICIT STORING,
of liquors, 87.

INLAND REVENUE,
granting of occasional licences by, 112. *And see* EXCISE.

INN,
what is, 31.
when first licensed, 31.
liability of keepers of, to entertain travellers, 31, 94.
Act of 1828 applies to inns, &c. only, 31.
may be indicted as a nuisance, 31.

INTERPRETATION CLAUSE,
of Act of 1828..53.
of Act of 1872..152.
Ireland, 161.
of Act of 1874.. 158.

INTOXICATING LIQUORS,
meaning of term, 153.

"INTOXICATING LIQUORS LICENSING ACTS,"
meaning of, 153.

IRELAND,
licensing law of, 79.
Act of 1872 applied to, 160.
modification of by Act of 1874 (Ireland), 160.
generally identical with English Act, 160.
interpretation clause of Act of 1872 in, 161.
meaning of "licence," 161.
meaning of "premises," 161.
"register of licences," 162.
amendment of closing laws in, 164.
saving for travellers, 165.
meaning of "spirit grocer," and "excise licence," 166.
certificate of character for, 166.
penalties on spirit grocer, 167, 168.
for evasions of licence, 167.
for making communication with refreshment-house, 168.
for selling in closing hours, 168.
putting out of tipplers from premises of spirit grocer, 168.
repeated convictions of spirit grocer, 168.

JOINT COMMITTEE,
confirmation of licences by, 123.
making of rules by, 126.
supply of deficiency of borough quota, 124.

JURISDICTION. *See* LICENSING AUTHORITY.
over sea-shore, rivers, &c., 146.

JURY,
conviction by, before forfeiture, abolished, 47.

JUSTICES,
disqualification of. *See* BREWERS.
discretion of, in granting licences, 34.
mandamus to. *See* DISCRETION.
information against, 34.
action against, 34.
stipendiaries may act as, 127.
See LICENSING AUTHORITY.

KNOWINGLY,
omission of word in offence of permitting drunkenness, 89.
of supplying liquor to constable, 93.
means that master liable for act of servant, 93.

LAW,
history of the, 1—6.
summary of the, 6—29.
table of offences, 27—29.
LEGAL PROCEEDINGS,
on confirmation, 130.
on renewals, 129.
defendant may give evidence, 138.
burden of proof on, 138.
description of offence, 138.
exceptions not negatived, 138.
procedure for recording convictions, 142.
excise officer may prosecute, 138.
scale of terms of imprisonment, 137.
small penalties, 137. *See* APPEAL.
LICENCES,
meaning of word, 153.
enumerated, 7—10.
official forms of, 175.
public-house, 8, 30.
for beer to be drunk on the premises, 8, 61.
for cider to be drunk on the premises, 8, 61.
refreshment-house wine, 8, 66.
for beer not to be drunk on the premises, 8, 57.
for cider not to be drunk on the premises, 8, 60.
shopkeeper's wine, 8, 66, 67.
table-beer, 8, 65.
spruce or black beer, 7, 151.
beer dealer's retail beer, 8, 65, 126.
six-day (closing on Sundays), 134.
early-closing, 135.
occasional, 111, 112.
shopkeeper's retail spirits or liqueur, 149.
spirit dealer's retail spirit, 152.
liqueur, 152.
wine dealer's retail wine, 152.
methylated spirits, 152.
theatre, 151.
packet-boat, 151.
sweets, 153, 156.
refreshment-house, 66, 67.
in force for one year only, 39, 58, 69.
lost or withheld, copy of, 44, 128.
to sell liquor to be drunk off premises, need not be confirmed, 126.
provisional grant and confirmation of, 124.
LICENSED VICTUALLER,
holder of public-house licence, 31, 108.
order of exemption and occasional licence to, 106, 111.
to other licence-holders, 108.
LICENSING ACTS,
changes introduced by, various, 1—6.
LICENSING AUTHORITY,
considered, 14—17.
in St. Alban's, 14, 150.
in the universities, 14, 150.
in boroughs, 14, 122.

LICENSING AUTHORITY—*continued.*
in counties, 14, 120.
stipendiary magistrates, 127.
licensing committee. *See* LICENSING COMMITTEE.
time of meeting of, 14, 30.
discretion of. *See* DISCRETION.

LICENSING COMMITTEE,
boroughs, 122.
where ten justices, original jurisdiction, 122.
counties, 120.
confirmation by, in, 120.
clerk of the peace to be clerk of, 121.
joint committee in boroughs where not ten justices, 123.
confirmation by, in, 123.
supply of deficiency of quota, 124.
making rules by, 126.

LICENSING DISTRICT,
definition of, 154.

LIQUEUR,
sale of, under dealer's licence, 8, 152.

LOCAL AUTHORITY,
what is, 107.
order of exemption from closing by, 106.
occasional licence by, 111.

LODGER,
saving for sale to, in closing hours, 102.
falsely pretending to be, 105.

LODGING-HOUSE,
not an inn, 31.

MAGISTRATES. *See* JUSTICES.
stipendiary may act, 127.

MAJORITY,
of justices to prevail, 28.

MALTSTER,
disqualified from acting, when, 145.
See BREWER.

MARKET,
exemption from closing of premises near, 106.

MASTER,
liability of, for act of servant, 90.

MAUNDY THURSDAY,
closing hours on, as on Good Friday, 98.

MEASURE,
standard to be used, 86.

MEDICATED SPIRITS,
saving for sale of, 151, 152.

METHYLATED SPIRITS,
do not require magistrates' licence, 151, 152.
See LICENCES.

METROPOLITAN DISTRICT,
definition of, 158.
closing hours in, 97.
local authority for orders of exemption in, 106.
qualification for premises in, 131.
annual value for beer-houses in, 62, 133.

METROPOLITAN POLICE DISTRICT,
closing hours in, 97.

MIDDLESEX,
time for holding licensing meeting in, 30.
rules of quarter sessions of, 197.

MINIMUM PENALTY,
on licence holders, 148.
in case of second offence, 148.
sale of spirits without licence, 83.

MORTGAGEE,
notice to, of recordable conviction, 142, 144.
of order of disqualification, 143.
See OWNER.

MUTINY ACTS,
canteen licences under, 151.

NAME AND ADDRESS,
of person on premises in closing hours to be given, 105.
on premises where illicit sale, 118.
penalty for giving false, 105, 118.

NAME OF LICENCE HOLDER,
to be displayed on premises, 87.

NEIGHBOURHOOD,
requirements of, to be considered, 33.

NEW LICENCE,
meaning of term, 159.
confirmation required, if liquor to be drunk on premises, 15, 120.
otherwise not, 16, 126.

NEWSPAPER,
advertisement in, of notice for new licence, 127.

"NIGHT-HOUSES,"
refreshment-houses commonly so called, 109.
See REFRESHMENT-HOUSES.

NOTICE,
of licensing meeting and adjournment, 37.
of application for new licence, 127.
form of, 184.
for transfer, 127.
forms of, 184, 185.

NOTICE—*continued.*
to attend on renewal, 129.
only for special personal cause, 130.
form of, 187.
of opposition to renewal, 129.
form of, 188.
to licensing officer of conviction, forfeiture or disqualification, 142.
to owner of tenant's recordable conviction, 142.
form of, 193.
of order of disqualification of premises, 116.
form of, 194.
notices may be sent by post, 149.
to owner by registered letter, 150.
of order of exemption, 107.
form of, 192.
of six-day licence, 135.
of early-closing licence, 136.

NUMBER OF ROOMS,
required in licensed houses, 132.
two, if spirits sold, 132.
otherwise, one, 130.

OATH,
justices may administer, 18.
evidence against renewal to be on, 129.

OBSTRUCTION OF CONSTABLE,
recordable offence, 117.

OCCASIONAL LICENCES,
saving for under Act of 1872..151.
provisions as to, of Act of 1874..111—113.
required at fairs and races, 111.
extension of time for closing, 111.
Act of 1872 applied to, 113.
grantable by excise with consent of justices, 112.
time of sale under, how limited, 112, 113.
in case of dinners and balls, 113.

OCCUPIER,
liable for sale without licence, 84.

OFFENCES,
against order, penalties for, 88—94.
applied in case of "occasional licence," 113.
list of, 27—29.

ORDER AS TO POPULOUS PLACES,
form of, 182.
See POPULOUS PLACE.

ORDER AS TO SUNDAY AFTERNOON CLOSING,
to suit hours of public worship, 101.
not in "metropolitan district," 101.
applicable to Good Friday and Christmas Day, 101.
not to operate for a month, 101.
advertisement of, 101.

ORDER OF DISQUALIFICATION,
when made, 115.
form of, 193.
appeal against, by owner, 143.
cancellation of, at petty sessions, 143.

ORDER OF EXEMPTION,
form of, 191.
from closing premises near markets, &c., 106.
as to theatres, repealed, 108.
on special occasions, 111.
notice of, to be displayed on premises, 107.

OWNER OF PREMISES,
notice to, of recordable conviction, 142.
may appeal against disqualifying order, 143.
may obtain transfer in case of certain convictions, 144.
name of, to be indorsed on licence, 119.
to be entered in register, 119.
mortgagee, &c., to be deemed owner, 144.

PACKET BOAT,
sale of liquors on board, 151.
not in Sunday closing hours, if moored (in London), 147.

PARTNERSHIP,
licence of partners, 60.

PASSING OF MONEY,
not necessary to prove on sale, 147.

PENALTY,
list of offences and penalties, 27—29.
minimum penalty of 20*s.* on licence holder, 148.
in case of second offence, 148.
part of any penalty may go to police fund, 148.
police and excise penalties distinct, 83.
excise officer may sue for police penalty, 138.
scale of terms of imprisonment on non-payment of, 137.
under Small Penalties Act, 139.
penalty on brewer acting as licensing justice, 145.

PIERS,
to be within jurisdiction of licensing justices, 146.

PLANS,
submission of, on application for provisional grant, 124.
house must be completed in accordance with, 124.

POLICE,
part of a penalty may go to police fund, 148.
See CONSTABLE and SUPERINTENDENT OF POLICE.

POLICE AUTHORITY,
definition of, 155.

POPULATION,
ascertained by census, 148.

"POPULOUS PLACE,"
definition of, for closing purposes, 158.
hours of closing in, 97.
jurisdiction of county licensing committee as to, 158.
revision of order after census, 159.

POST,
notices may be sent by, 149.
to owner, if letter registered, 150.

PREMISES,
evasions of licence by drinking on, 84.
convictions to be registered against, 115.
disqualification of, on convictions, 115, 116.
See DISQUALIFICATIONS.

PROSTITUTES,
harbouring reputed, 90.
saving for refreshment to, 90.

PROVISIONAL GRANT OF LICENCE,
any person interested may apply, 124.
ratification of, 125.
discretion of justices. 125.
form for, 180, n.

PUBLIC-HOUSE LICENCE,
the licence under Act of 1828, so named, 8.
what it authorizes, 9, 30.
does not require value qualification before 1872..182.

PUBLIC NOTICE,
of licensing meeting, 35.
of adjournment, 37.
no notice to applicant for renewal, 136.
of special sessions, 37.
of alteration of Sunday afternoon closing hours, 101.

PUBLIC WORSHIP,
order accommodating closing hours to, 101.
as to Sunday, Christmas day, Good Friday, 101.
advertisement of order, 101.

QUALIFICATIONS,
of premises for licence, 13, 131—133.
See DISQUALIFICATIONS.

QUARTER SESSIONS,
appeal to, against refusal to renew or transfer, 48.
against conviction, 140.
against the recording of a conviction, 114.
against refusal to grant new licence abolished, 158.
appoint and regulate licensing committee, 120.

QUORUM,
of licensing justices, 37.
of borough licensing committee, 123.
of county, 120.
of joint committee, 123.

QUO WARRANTO,
whether to licensing justices, 84.
whether to universities, 151.

RACES,
sale of liquor at, 112.
occasional licence required for, 111.

RATEABLE VALUE,
annual value instead of, 133.

RATEPAYERS,
may inspect register of licences, 119.
certificate of, abolished, 61.

RECORD OF CONVICTION ON LICENCE,
for what offences, 11, 113—115.
recording always discretionary, 113.
always to be considered, 113.
to be entered on register, 119.
effect of third, 113.
after five years not to increase penalty, 116.
omission to record supplied, 116.
penalty on effacing record of, 117.
notice to licensing clerk of, 142.
notice to owner of, 142.

RECORDER,
may not act in licensing, 49.

REFRESHMENT-HOUSE,
when requires excise licence, 67.
may receive wine licence, 68.
closing of, if not licensed for wine, 109.
consumption of liquors in, when forbidden, 108.
police control of, 110.

REFRESHMENT-HOUSE WINE LICENCE,
description of, 68.
qualification for, 68.
order of exemption from closing, 111

REGISTER OF EXCISE LICENCES,
beer, 58.
refreshment-houses, 120.

REGISTER OF LICENCES,
to be kept by clerk of licensing justices, 119.
to contain names of licensed persons and owners, &c., 119.
registration fee of licensed person, 120.
to be evidence, 145.
may be inspected, 120.
fee for inspection, 120.
in form prescribed by justices, 119.
specimen form of, 196.

REMOVALS OF LICENCES,
how obtained, 136.
provisional grant of, 125.
notice of application for, 136.
copy of, to owner, 136.
form of, 186.

RENEWALS,
meaning of term, 19, 153.
how made, 19.
requirement of attendance of applicant, 129.
only for special cause personal, 130.
notice of opposition to, 129.
must contain grounds, 130.
evidence upon, to be on oath, 129.
of certain licences existing in May, 1869..19, 76.
appeal against refusal of, 48, 71.
notice of appeal, 48.
costs of appeal, 48, 51.

REPEAL OF ACTS,
by Act of 1828..52.
of 1869..78.
of 1872..156, 170—173.
of 1874..158, 160.

REPEATED CONVICTIONS,
effect of third recordable, 114.
applied to "spirit grocers," Ireland, 161.
list of recordable convictions, 11, 12, 114.

RETAIL OF LIQUORS,
what is, 7.
licences required for, enumerated, 7, 8.

RIOT,
two justices may close houses in case of, 97.

RIVER
between two licensing jurisdictions subject to either, 146
in metropolitan police district, sale on, 147.

ROOMS,
number of, required in licensed houses, 132.

RULES,
as to proceedings on confirmation, 130.
by joint committee, 126.
of Middlesex quarter sessions, 197.

SALE WITHOUT LICENCE,
penalties for, 80.
forfeiture on second conviction of, 81.
saving in case of death or bankruptcy, 81.

SALE WITHOUT LICENCE—*continued.*
whether clubs liable for, 82.
minimum penalty in case of spirits, 83.
excise penalties for, 83.
sale under void licence, 84.

SATURDAY CLOSING,
half an hour earlier in metropolis, 101.
elsewhere same as on other week days, 101.

SAVINGS,
for other acts under Act of 1872..145.
for rights, &c., 53, 77, 150.

SCHEDULES,
of Act of 1869..78.
of Act of 1872, repeals, 170—173.
of Act of 1874, as to "metropolitan district," 158.

SCOTLAND,
licensing law of, 79.
Act of 1872 does not extend to, 79.

SEARCH WARRANT,
grantable to search unlicensed premises, 118.
person found on premises liable, 118.
must give name and address, 118.
penalty for giving false, 119.

SERVANT,
liability of master for act of, 90, 93.

SHOPKEEPER'S LICENCES,
shopkeeper's wine, 8, 66.
shopkeeper's retail spirit or liqueur, 8, 148.
not to be refused except on special grounds, 149.

SIX-DAY LICENCE,
for sale except on Sundays, 134.
reduced duty, 135.
notice by holder of, 135.
reduced duty where early closing licence also, 136.

SPECIAL SESSIONS,
for transferring licences, 36.
public notice of, 37.
beer-dealer's retail licence may be granted at, 126.

SPIRITS,
sale of, how restricted, 7, 8.
sold under public-house licence, 32.
under dealer's retail excise licence, 7, 8, 148.
when it requires magistrates' licence, 148.
retailer of, under public-house licence, must hold beer licence, 32.
what is retail of, 7.
sale of, to children, penalty for, 86.
debt for, how far recoverable, 90.

SPRUCE,
brewer's licence for sale of, 7.
saved by Licensing Act, 1872..150, 151.

STANDARD MEASURE,
sale must be by, 86.

STATION,
licence at railway, no value qualification for, 131.
sale of liquors at, in closing hours, 102, 104.

STIPENDIARY MAGISTRATES,
may grant licences, 127.

STOCKS,
punishment of, for drunkenness abolished, 89.

STORING LIQUOR,
without licence, penalty on, 87.

STRUCTURAL ADAPTATION,
requirement of, in licensed houses, 132.
where provisional grant of licence, 125.

SUGAR,
may be used by brewers, 96.

SUMMARY,
of the law of licensing, 7—29.
table of offences, 27—29.

SUMMARY JURISDICTION,
under Act of 1872..137.
constitution of court of, 37

SUNDAY,
six-day licence, 134.
closing hours on, 97. *See* CLOSING and SIX-DAY LICENCE.

SUPERINTENDENT OF POLICE,
notice to, of application for new licence, 17, 71, 127.
for transfer, 22, 127.

SURREY,
time for holding licensing meeting in, 30.

SUSPENSION ACT, 1871,
character of, 4

SWEETS,
sold under wine licences, 153.
to sell, requires a magistrates' licence, 9.
not exciseable liquor, 47.

TABLE BEER,
licence for sale of, 8.

TABLES,
of offences, 27—29.
of licences, 7, 8, 9.
of forms. *See* the TABLE OF CONTENTS.

THEATRES,
sale of liquor in, under excise licence, 7, 151.
order of exemption from closing in favour of premises near, 108.
abolition of, by Act of 1874..108.

THIEVES,
harbouring, 91.
forfeiture and disqualification on conviction of, 91.

TOWN,
definition of, under Act of 1872..155.
under Act of 1874, for closing purposes, 158, 160.

TRANSFER,
meaning of term, 21, 153.
in what cases allowed, 21, 40.
to owner in case of certain convictions, 144.
notice of application for, 127.
forms of, 184, 185.
special sessions for, 36.
notice of, 37.
temporary transfers at petty sessions, 42.
in metropolis by police magistrate, 43.
discretion of justices on, 42.
appeal against refusal of, 48.

TRAVELLER,
legal right of, to entertainment, 94.
saving for sale to, in closing hours, 102.
"bonâ fide," meaning of, 104.
railway traveller, 104.
burden of proof as to, in case of information, 103.
holder of six-day licence may not sell to, 135.
penalty for falsely pretending to be, 105.
special proceedings for enforcement of, 103.
direction of prosecution by justices, 103.

UNIVERSITIES,
savings for, 53, 77, 150.

VALUE. *See* ANNUAL VALUE.

VICTUALLING-HOUSE,
what is, 31.

VINTNER,
saving for, 53, 77, 150.
restriction of privilege of, 151.
penalty on, for making communication with place of resort, 87.

WARRANT,
apprehension without, after closing hours, 105.
of persons selling spirits without licence, 83.
to search unlicensed premises, 118.
apprehension without, of persons found, 118, 119.

WHOLESALE,
sale of liquor by, saving for, 151.
wine dealer's retail licence, 7.
spirit dealer's retail licences, 7, 8.
beer dealer's retail licence, 8.
qualification for, 65.
grantable at special sessions, 65, 126.

WIFE OF DEFENDANT,
may give evidence, 138.

WINE,
what is retail of, 7.
refreshment-house wine licence, 66.
including sweets, 153, 156.
shopkeeper's wine licence, 66, 67.
wine dealer's wine licence, 66, 67, 152.

WINE AND BEERHOUSE ACTS,
object of, 3.
perpetuation of, by Act of 1872..156.